SUPREME COURT OF THE UNITED

OCTOBER TERM, 1904.

No. 173.

IRON CLIFFS COMPANY, THE CLEVELAND CLIFFS IRON COMPANY, WILLIAM G. MATHER, AND MURRAY M. DUNCAN, PLAINTIFFS IN ERROR,

vs.

NEGAUNEE IRON COMPANY, EDWARD P. KRUTTSCHNITT, AND MARY KAUFMAN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

FILED JANUARY 16, 1905.

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1 STATE OF MICHIGAN:

Supreme Court. In Chancery.

NEGAUNEE IRON COMPANY, EDWARD N. Breitung, and Mary Kaufman, Complainants and Appellees, *vs.* THE IRON CLIFFS COMPANY, THE CLEVELAND-CLIFFS Iron Company, Wm. G. Mather, and Murray M. Duncan, Defendants and Appellants.	Appeal from the Circuit Court of the County of Marquette. In Chancery.

RECORD.

Bill of Complaint.

State of Michigan to the circuit court for the county of Marquette, in chancery:

Humbly complaining unto this honorable court your orators, The Negaunee Iron Company, a corporation organized and doing business under the laws of the State of Michigan, Edward N.
2 Breitung and Mary Kaufman, of the city of Marquette, in said county, respectfully represent and show unto this honorable court:

First. That on the 26th day of February, A. D. 1857, one James L. Reynolds of the city of Chicago, Illinois, was the owner in fee of the lands mentioned and described in Exhibit "A" hereto annexed and hereinafter referred to and made a part of this your orator's bill of complaint.

Second. That on the 26th day of February, A. D. 1857, the said James L. Reynolds, for a valuable consideration, executed and delivered to one Charles T. Harvey, of the county of Marquette, Michigan, a conveyance of said lands, except as stated in the reservations, exceptions and conditions set forth in said deed and in the agreement thereto annexed and forming a part thereof, as set forth in said Exhibit "A."

Third. That on the 2d day of April, A. D. 1857, Moses A. Hoppock, of New York city, State of New York, William Pearsall of Jersey City, Hudson county, and State of New Jersey, and the said Charles T. Harvey, made and filed articles of association for the purpose of organizing a corporation, under the name of the Pioneer Iron Company, pursuant to the provisions of an act passed by the legislature of the State of Michigan, and approved February 5th, 1853, entitled "An act to authorize the formation of corporations for mining, smelting or manufacturing iron, copper, mineral, coal, silver

or other ores or minerals, and for other manufacturing purposes." and an act supplementary to said act, approved February 6th, 1855, and did thereby effect the organization of said corporation. That a copy of said articles of association, giving the names of the stockholders of said company, their respective places of residence, numbers of shares held by each, and the particular and specific purposes for which said corporation was organized, *are* hereto annexed,
3 marked Exhibit "B," and made a part of this your orators' bill of complaint.

Fourth. That in the spring or early summer of 1857, the said Pioneer Iron Company, then not having or owning any furnace or forges, commenced the erection of a furnace at Negaunee in said county of Marquette, and on the 17th day of September, A. D. 1857, desiring to provide for a supply of iron ore in addition to the ores that might thereafter be found or discovered upon lands then owned by said corporation, to be manufactured into iron in said furnace and in certain forges which said company then contemplated constructing, in connection with said furnace, entered into an agreement with the said Charles T. Harvey, then a stockholder and director in and the manager of said Pioneer Iron Company, which said agreement is hereto annexed marked Exhibit "C" and made a part of this your orators' bill of complaint. Which said agreement was duly witnessed and acknowledged, and on the said 17th day of September, A. D. 1857, was duly recorded in the office of the register of deeds of said county of Marquette, in Liber 1 of Miscellaneous Records, at pages 64 and 65. And your orators show and aver that said agreement was made for the purpose and with the understanding between the parties thereto, that the said Pioneer Iron Company should have the right to mine and remove from the lands described in said agreement or lease, such quantity and only such quantity of iron ore as should be needed for use in the furnace then being constructed by said company, and in the forges which said company then contemplated building in connection with said furnace. And your orators show and aver that they are informed and believe and so charge the truth to be, that by the understanding and agreement of the parties to said lease and grant so made as aforesaid, on the 17th day of September, A. D. 1857,
4 by the said Charles T. Harvey to the said Pioneer Iron Company, it was contemplated that the said Pioneer Iron Company should thereby acquire an interest in the lands therein mentioned and described, subject to certain limitations therein set forth, which interest was for the sole purpose of mining and quarrying at its own expense such ores and marble as should be found therein, subject to the qualification and limitation that said company should not quarry, mine or remove any ores from said lands except such as it should actually convert into merchantable iron in its own furnace or forges, meaning the furnace and forges being then constructed and about to be constructed by said company at Negaunee aforesaid. And it was contemplated and understood by the parties to said

agreement, that under the terms thereof the said Pioneer Iron Company should have the right to occupy so much of the surface of said land as should be necessary to open and work successfully such mines of iron or marble as should be discovered on said property for the purpose aforesaid, and that it should pay to said Harvey at the rate of twelve dollars per acre for unimproved lands which it might require for the purpose of mining as aforesaid, said lease and agreement being made subject to the terms of the deed and agreement hereinbefore referred to, executed by James L. Reynolds and wife to the said Charles T. Harvey on the 26th day of February, A. D. 1857.

Fifth. Your orators further show that after the execution of the lease set forth and described in paragraph numbered fourth of this bill, and prior to the 1st day of March, 1883, one Edward Breitung, late of the county of Marquette, deceased, acquired by mesne conveyances all the rights, title and interests which were excepted and reserved to the said James L. Reynolds in his said conveyance and agreement to the said Charles T. Harvey on the 26th day of
5 February, A. D. 1857. That said Edward Breitung departed this life intestate on or about the 25th day of March, A. D. 1887. That upon the death of said Edward Breitung all of said Reynolds' interests in the lands described as follows, to-wit:

The east half of the southwest quarter and the south half of the southeast quarter of section (6); all of section (7), except the northwest quarter of the northwest quarter and the south half of the northeast quarter; all of section (8), except a small triangular piece of land in the northwest corner of the northeast quarter of the northwest quarter, and except the west half of the northeast quarter, the southeast quarter of the northeast quarter and the northeast quarter of the southeast quarter, with other lands,

passed to and became vested in your orator, Edward N. Breitung, by inheritance, as sole heir at law of said Edward Breitung, deceased, subject to the dower interest of Mary Kaufman, his widow, therein, and subject to the rights of Arthur B. Meeker, William L. Brown, Henry D. Smith and Andrew G. Clark, and their assigns, under a contract with said Edward Breitung of date January 31st, 1882, for the purchase of an undivided three-quarters of said Reynolds' mineral interests in that portion of the southeast quarter of the southwest quarter and the south half of the southeast quarter of said section six, lying south of the Chicago & Northwestern Railway track, and the undivided three-quarters of said Reynolds' mineral interest in the lands above described in said sections seven and eight. And your orators further show that the said Edward N. Breitung subsequently acquired the entire interest of said Meeker and others, and their assigns, in said contract, and that your orator, the said Edward N. Breitung, on the 2d day of January, 1894, conveyed by quit claim deed an undivided one-half of the
6 interest acquired by him under said contract, to the said Mary Kaufman.

And your orators further show that all the right, title and interest acquired by the said Charles T. Harvey from the said James L. Reynolds in that part of said lands described as follows, to-wit:

That part of the southeast quarter of the southwest quarter and the south half of the southeast quarter of section (6), lying two hundred (200) feet south of the track of the Peninsula division of the Chicago & Northwestern Railway Company as the same lay in 1871; also, the north half of the northeast quarter of section (7), also the northeast quarter of the northwest quarter and the south half of the northwest quarter of section seven (7), the entire south half of section seven (7); the entire northwest quarter of section eight (8), except the small triangular piece in the northeast quarter of the northwest quarter as aforesaid; the northeast quarter of the northeast quarter of section (8); the northwest quarter of the southwest quarter of section eight (8); the south half of the southwest quarter of section eight (8); the northwest quarter of the southeast quarter of section eight (8); the south half of the southeast quarter of section eight (8); all in town forty-seven (47) north of range (26) west, was acquired by your orator, The Negaunee Iron Company by mesne conveyance from the said Harvey, on or before the 1st day of February, 1882.

And your orators further show that all the right, title and interest acquired by the said Charles T. Harvey from the said James L. Reynolds in that part of said lands described as follows, to-wit:

The southwest quarter of the southeast quarter and the east sixty (60) rods of the southwest quarter of said section five (5),

except such interest, rights and privileges as the said Harvey granted to the Pioneer Iron Company by said lease and grant as aforesaid, was acquired by said Edward Breitung, deceased,
7 and passed to and became vested in your orator Edward N. Breitung, by inheritance, subject to the dower interest of Mary Kaufman therein, in the manner hereinbefore in this paragraph set forth.

And your orators further show, that Edward N. Breitung and Mary Kaufman have acquired and now own all the right, title and interest acquired by said Charles T. Harvey from the said James L. Reynolds in that part of said lands described as follows, to-wit:

Lots ten and twelve (10 and 12) of the Harvey lots so-called: Lot ten (10) commencing at a point 130 rods due east from the iron post in the center of section six (6) aforesaid, thence south 26 chains and 70 links, thence east 10 rods, thence north 26 chains and 70 links, thence west 10 rods to the place of beginning: Lot twelve (12) commencing at a point 150 rods due east of said iron post in the center of section six (6) and specifically described by metes and bounds, being 10 rods wide east and west by 66 rods long north and south. Also a certain tract commencing at a point 170 rods due east from said center post, running thence east 90 rods, thence south 166 rods

to a point 50 feet north of the center of the Peninsula Railway track, thence north 50 degrees and 30 minutes west 26 rods, thence north 60 degrees and 30 minutes west 20 rods, thence north 71 degrees and 15 minutes west 74 rods, thence north 46 rods, thence east 20 rods, thence due north 66 rods to the place of beginning, containing 81 68–100 acres of land,

except such interests, rights and privileges as the said Harvey granted to the Pioneer Iron Company by said lease and grant as aforesaid.

And your orators further show that all the interest acquired by the said Charles T. Harvey from the said James L. Reynolds in that part of said land described as follows, to-wit:

8 A tract of land 550 feet wide extending through sections five, six and eight (5, 6 and 8), in town forty-seven (47) north of range twenty-six (26) west, and lying between a line 200 feet south and a line 200 feet north of the right of way of the Chicago & Northwestern Railway Company; and also a tract of land 150 feet wide, between those lands now used as a right of way by the said railway company,

was acquired by your orators, The Negaunee Iron Company, by a conveyance from said Harvey and his wife on or before the 7th day of December, A. D. 1899.

Whereby and by reason whereof, all the right, title and interest of the said Edward Breitung, now deceased, in and to said lands and all the interest, rights and privileges excepted and reserved to the said James L. Reynolds, as aforesaid therein, and all the rights acquired by the said Harvey, by virtue of said deed and contract between himself and Reynolds, as aforesaid therein, have been acquired by your orators, Edward N. Breitung, Mary Kaufman and The Negaunee Iron Company, who now own and have owned the same for more than fifteen (15) years last past in the proportions and manner above set forth, except the tract of land last aforesaid described. And your orators further show that all of said deeds of conveyances were duly recorded in their proper order soon after the same were executed and delivered; the same or certified copies thereof now being in the possession of your orators ready to be produced and proved as this honorable court shall direct, and to which, when produced, your orators for greater particularity pray leave to refer.

Sixth. And your orators allege that they now are and for more than fifteen years last past they and their grantors have been in the actual and exclusive possession of all the lands above described and of the ores and marbles therein, claiming to be the exclusive owners thereof.

9 Seventh. And your orators further show that between the time of the organization of said Pioneer Iron Company and the month of September, 1859, said company erected two

stacks or furnaces, at Negaunee in said county, instead of one as contemplated at the time of the execution of said grant or lease by said Charles T. Harvey to said Pioneer Iron Company as hereinbefore set forth.

Eighth. That said Pioneer Iron Company carried on the business of manufacturing iron at its said furnaces from the time they were constructed until about the first day of January, 1866. That said Pioneer Iron Company, in carrying on its said business, procured no iron ore from the premises, or any portion of the premises described in said lease executed by the said Charles T. Harvey to the said Pioneer Iron Company, but procured all of their ore for the manufacturing of iron from other lands.

Ninth. That on or about the first day of January, 1866, said Pioneer Iron Company ceased to do business, and from the 10th day of March, 1866, to the present time has not been engaged in nor has it in any way carried on the business of "procuring a location for a manufactory, and lands to furnish coaling facilities for said company in the upper peninsula of Michigan," or elsewhere, and has not, since that time been engaged in "working the same for the production of merchantable iron," nor has said company from that time to the present, made any use of their lands as specified in article one of the articles of association of said corporation, and has not since that time mined or operated under said lease, but on the contrary at and from that date abandoned said lease.

Tenth. And your orators further show unto the court that on the 10th day of March, A. D. 1866, the said Pioneer Iron Company entered into an agreement and thereby leased to the Iron Cliffs Company, a corporation organized under the laws of the State of Michigan, doing business at Negaunee in said county of Marquette, for the period of ten years, its entire real and personal property situated in said county of Marquette, consisting of all its iron works, buildings, lands and rights, including the full and entire privilege of mining and getting iron ore under a certain existing lease or contract which it then held with the Jackson Mining Company for the purpose of making pig iron, subject, however, to certain limitations and reservations in said lease set forth; which said lease and agreement was duly signed, sealed and acknowledged and was recorded in the office of the register of deeds of Marquette county, on the 21st day of March, A. D. 1866, in Liber 1 of Miscellaneous Records at pages 185, 186, 187, 188, 189 and 190, to which said record or a certified copy thereof, your orators beg leave to refer.

Eleventh. And your orators further show unto the court that since the execution of said lease and agreement by said Pioneer Iron Company to said Iron Cliffs Company, the said Pioneer Iron Company has made and filed no report either with the secretary of state or with the clerk of the county of Marquette, as required by the provisions of section 4005 of Howell's Statutes of the State of Michigan or as required by section 4107 of Howell's Statutes of the

State of Michigan; nor has it made or filed with said secretary of state or with said county clerk any report whatever, since the execution of said lease to said Iron Cliffs Company.

Twelfth. And your orators show that they are informed and believe and so charge the truth to be that at some time prior to the first day of January, 1873, the said Iron Cliffs Company became the owner of all the capital stock of said Pioneer Iron Company, and said stock has since that time been held in the names of different individuals for the uses and purposes of said Iron Cliffs Company,

11 and the certificates of stock representing said capital stock of said Pioneer Iron Company have been and now are held in the names of different individuals who are officers, directors, stockholders, agents or servants of the said Iron Cliffs Company, and of the Cleveland Cliffs Iron Company, a corporation organized under the laws of the State of West Virginia, and doing business at Negaunee in said county of Marquette, Michigan, which two corporations have been operating together in the conduct of their business, and whose officers and agents are in the main the same persons. And your orators, upon information and belief as aforesaid, charge the truth to be that said stock is held as aforesaid for the use and benefit of said Iron Cliffs Company and the said Cleveland Cliffs Iron Company, but that your orators are unable for want of more definite information to state the particular interest acquired by said Cleveland Cliffs Iron Company in the property and effects of the said Iron Cliffs Company, but they are informed and believe and so charge the truth to be that said Cleveland Cliffs Iron Company claims to have some interest in the property owned or lately owned by said Iron Cliffs Company and have in some way succeeded to its rights, and that as such successor or assignee claims some interest in the rights and privileges granted in said lease by said Charles T. Harvey to said Pioneer Iron Company on the 17th day of September, 1857.

Thirteenth. That on the 2d day of April, A. D. 1887, the corporate existence of said Pioneer Iron Company, by the terms of its articles of association, expired by limitation, and said corporation became and was thereby dissolved; and your orators aver that whatever rights, if any, the said Pioneer Iron Company had and held under and by virtue of said lease were thereby terminated and extinguished, and such rights and interest thereby reverted to and became vested in the said Charles T. Harvey and his grantees.

12 Fourteenth. And your orators show unto this honorable court that they are informed and believe and so charge the truth to be that the said Pioneer Iron Company has not actually occupied any portion of the lands specifically described in said lease from said Charles T. Harvey to said Pioneer Iron Company, in the exercise of its corporate franchises, nor has it mined or attempted to mine or take therefrom any iron ore or marble since the execution of the lease of March 10th, 1866. Nor did it ever mine or attempt

to mine any iron ore or marble upon and from any of the lands specifically described in said lease of date September 17, 1857.

Fifteenth. And your orators further show unto the court that from and after the 10th day of March, A. D. 1866, the furnaces and forges of the said Pioneer Iron Company, in which it was, by the terms of said lease and grant of date September 17, 1857, contemplated that the ore therein referred to should be manufactured into iron, were never operated by the said Pioneer Iron Company, but were operated by the Iron Cliffs Company and its lessees for a number of years thereafter, but that said furnaces and forges were entirely dismantled and destroyed many years ago, and no longer exist, and that from the said 10th day of March, 1866, said Pioneer Iron Company ceased to carry on the business for which it was organized and has not since been engaged in nor carried on any of the business contemplated by its articles of association.

Sixteenth. Your orators show that recently and within the year last past, the said Iron Cliffs Company and said Cleveland Cliffs Iron Company, recognizing your orators' rights in said lands free from any claims or rights under said lease of date September 17th, 1857, on the part of said Pioneer Iron Company, applied to your orators, through their president William G. Mather, to obtain a
13 lease of said lands or a portion thereof, under which the lessees should have the right to mine and remove the iron ore therefrom, which application your orators refused to grant; and failing to secure the right from your orators to mine the ore from said lands by means of such proposed lease, the said Iron Cliffs Company and said Cleveland Cliffs Iron Company and their officers, directors and stockholders have fraudulently combined and planned to obtain the iron ore from said lands against the rights of your orators and without payment therefor, by the means following: They fa-sely and fraudulently claim and pretend, that said Pioneer Iron Company still exists and owns and holds said lease, notwithstanding said Pioneer Iron Company expired by the limitation of its term and was dissolved and ceased to exist in the year 1887 as hereinbefore stated; and they make use of the name of said Pioneer Iron Company as a cover under which and by means of which they seek to carry on the work of mining and removing ore from said lands, and they are now actually engaged in carrying out said plan, and to that end have given notice under the name of the Pioneer Iron Company to your orators, of entry upon the following described lands under said lease, to-wit:

The east half of the southwest quarter and the south half of the southeast quarter of section six, the north half of the northeast quarter of section seven, and the northwest quarter of section eight, all in town forty-seven north of range twenty-six west in said county of Marquette;

and by their agents, employés and servants have entered upon said lands against the protest of your orators and are sinking test pits,

tearing up the soil and exploring said lands for iron ore and are preparing to mine and remove and are mining said ore therefrom.

And your orators aver that the said agents, employés and
14 servants of said Iron Cliffs Company and of said Cleveland Cliffs Iron Company as aforesaid will continue to carry on the work of exploring and mining and removing the ore from said lands unless restrained therefrom by the order and decree of this honorable court.

Seventeenth. And your orators show that all the lands hereinbefore specially described are mineral lands and have therein large deposits of valuable iron ore and that the chief value of said lands consists in the iron ore situated therein, and the mining and removing therefrom of said iron ore by the defendants would take from said lands their principal value and would work and would be to your orators an irreparable injury.

Eighteenth. Your orators show that the officers and agents of said Iron Cliffs Company and said Cleveland Cliffs Iron Company, who are engaged in and carrying out the said scheme and plan to defraud your orators and to mine and remove the iron ore from said lands under the cover and by the use of the name of the Pioneer Iron Company, are, so far as they are known to your orators, William G. Mather, who is the president of said Iron Cliffs Company and also president of said Cleveland Cliffs Iron Company, and Murray M. Duncan, who your orators are informed and believe, and upon information and belief charge the truth to be, is the managing agent of the said Iron Cliffs Company and of the said Cleveland Cliffs Iron Company. That said Duncan and said Mather and their confederates, as aforesaid, well know that the corporate existence of the said Pioneer Iron Company has long since been terminated and said corporation dissolved, and that the rights and privileges granted in said lease of date September 17th, 1857, have reverted to the said Charles T. Harvey and his grantees; notwithstanding

which said Duncan, under the pretence that he is acting as
15 agent of said Pioneer Iron Company, is engaged in superintending and directing said work which is being done on said lands by various persons who are laborers acting under his orders.

Nineteenth. And your orators show that they have applied to said William G. Mather and to said Duncan to ascertain who are the persons whom they claim or assert to be officers and directors of said pretended Pioneer Iron Company, but they omit and decline to give your orators the names of such persons or to furnish your orators with any information by means of which your orators can ascertain who are such officers or directors. And your orators are unable to ascertain who, besides said Mather and Duncan, are the persons who, as officers, directors or stockholders of said Iron Cliffs Company and said Cleveland Cliffs Iron Company are engaged with them in said scheme and work to mine and remove the iron ore from said lands, the names of all which persons when ascertained

by your orators they pray may be added to this bill of complaint, and they made parties defendant thereto.

Twentieth. And your orators show that said lease and grant so executed by said Charles T. Harvey to said Pioneer Iron Company, of record as aforesaid, together with the claims or pretended claims of the said Murray M. Duncan, William G. Mather, and the others of said officers and agents of the said Iron Cliffs Company and said Cleveland Cliffs Iron Company, who pretend to be directors of the said Pioneer Iron Company, and the claims of the said Iron Cliffs Company, and the claims of said Cleveland Cliffs Iron Company as aforesaid, under the name of the Pioneer Iron Company, constitute a cloud upon your orators' title to said lands and tend to depreciate the value thereof and to render it impossible to sell or dis-
16 pose of the same at their true value. And your orators aver that they are entitled to have their title to said lands confirmed and quieted as to all persons claiming title to or interest in said lands in opposition to the title of your orators, and that the cloud upon your orators' title as aforesaid may be removed, and that by the decree of this honorable court the said lease may be declared to be of no force or effect against your orators.

Twenty-first. And your orators respectfully submit;

(1.) That by the terms of said lease so executed by the said Charles T. Harvey to the said Pioneer Iron Company, as aforesaid, is understood and interpreted by the parties thereto, the right to enter upon said lands and take ore therefrom was limited and confined to the taking of such ore only as was required for use in the furnaces and forges of the said Pioneer Iron Company then being built at Negaunee aforesaid, which furnaces and forges having been dismantled and destroyed as aforesaid, all rights of said Pioneer Iron Company under said lease terminated and were at an end.

(2.) That as to the interests or rights acquired by the said Charles T. Harvey, under the said deed and contract with the said James L. Reynolds, of date February 26th, 1857, to-wit, the right, free of cost to mine for his own use for manufacturing purposes within the then present limits of Marquette county any minerals, ores or marble found on any of the premises therein referred to, being the right and privilege of the said Harvey and his assigns to take and convert to his or their own use for the purpose above indicated ores upon said lands to which the said Reynolds retained and reserved an equal undivided one-half interest, said right was indivisible and not susceptible of assignment except as a whole. And your orators therefore insist that said lease to said Pioneer Iron Company did not and could not in any way operate to vest in said company any right or interest in the minerals so reserved to said Reynolds as aforesaid.

17 (3.) That by reason of the failure of said Pioneer Iron Company to occupy any portion of the lands described in said lease so executed by the said Charles T. Harvey to the said Pioneer Iron Company, as aforesaid, in the exercise of its franchises, from

and ever since the 10th day of March, A. D. 1866, as hereinbefore set forth, said lease and the rights thereby acquired by the said Pioneer Iron Company became and were terminated, and that whatever rights were therein granted to said Pioneer Iron Company and its successors, reverted to the said Charles T. Harvey and to his grantees, which said rights your orators have acquired and now hold in the manner hereinbefore set forth.

(4.) That by reason of the abandonment of said lease of date September 17th, A. D. 1866, by said Pioneer Iron Company as aforesaid, the same became terminated and all the rights and privileges therein granted to the said Pioneer Iron Company reverted to the said Harvey and his grantees as aforesaid.

(5.) That by reason of the expiration of the corporate existence of the said Pioneer Iron Company on the 2nd day of April, A. D. 1887, whatever rights and privileges had been acquired by said Pioneer Iron Company thereby became terminated, and immediately and by operation of law reverted to the said Charles T. Harvey and his grantees, which said rights your orators have acquired and now hold in the manner hereinbefore set forth.

Twenty-second. And your orators submit that the actings, doings and pretences of the said Murray M. Duncan, William G. Mather and the said Iron Cliffs Company and the said Cleveland Cliffs Iron Company and their said officers, stockholders, agents and servants, as aforesaid, are contrary to equity and good conscience and tend to manifest wrong, injury and oppression *to* your orators in the premises.

Twenty-third. Inasmuch as your orators are remediless in the premises, except in a court of equity, and to the end that
18 said William G. Mather, Murray M. Duncan, the said Iron Cliffs Company and the said Cleveland Cliffs Iron Company and their confederates when discovered may full, true, direct and perfect answers make without oath (their answers on oath being hereby waived) to all and singular the matters hereinbefore stated and charged as fully and particularly as if the same were herein repeated and they thereunto distinctly interrogated, and to the end that your orators' title to said lands as heretofore set forth may be quieted and confirmed in them, your orators pray.

(1.) That by the decree of this honorable court, all the rights and privileges in the mineral and stone granted in said lease, executed by the said Charles T. Harvey as aforesaid, to the said Pioneer Iron Company, be declared to be terminated and of no binding force or effect as against your orators or their said lands.

(2.) That in so far as it affects your orators' said lands, said lease be cancelled and the cloud upon your orators' title as aforesaid be removed, and your orators' title to all the iron ore and marble in and upon their said lands be quieted and confirmed in your orators.

(3.) That the said William G. Mather, Murray M. Duncan, the said Iron Cliffs Company and the said Cleveland Cliffs Iron Company, and their officers, directors, agents, attorneys and employees,

be perpetually enjoined and restrained from setting up in the name of said Pioneer Iron Company or in any other manner any right or title under said lease from said Charles T. Harvey to said Pioneer Iron Company, in or to your orators' said lands, and entering upon or removing from said lands any iron ore or marble, and for such other and such further relief as to the court shall seem meet and proper.

Twenty-fourth. May it please the court to grant unto your orators the writ of subpœna to be directed to the said William G. Mather, Murray M. Duncan and the Iron Cliffs Company and Cleve-
19 land Cliffs Iron Company and their confederates when discovered, thereby commanding them and every of them at a certain day and under a certain penalty therein to be specified, personally to be and appear before this honorable court and then and there to answer all and singular the premises and to stand to, perform and abide such order and decree therein as to the court shall seem meet.

Twenty-fifth. May it please the court, the premises being considered, to grant unto your orator- the peoples' writ of injunction to be directed to the said William G. Mather, Murray M. Duncan, the Iron Cliffs Company, the Cleveland Cliffs Iron Company, their officers, directors, confederates, attorneys, agents and servants, commanding them and each of them to desist and refrain from entering upon any of your orators' said lands, and from mining or taking therefrom any iron or marble or from injuring the surface thereof by exploring thereon, or from in anywise interfering with your orators' possession thereof, until the further order of the court. And your orators will ever pray.

NEGAUNEE IRON COMPANY,
MARY KAUFFMAN,
By S. W. SHAULL, *Their Solicitor.*
EDWARD N. BREITUNG.

S. W. SHAULL,
Solicitor for Complainants.
ARCH B. ELDREDGE,
CHARLES R. BROWN,
BENTON HANCHETT,
Of Counsel.

STATE OF MICHIGAN, } ss :
County of Marquette, }

On this third day of March, A. D. 1900, before me, Thomas
20 Gillespie, a notary public in and for said county, personally came Edward N. Breitung, one of the above named complainants, and made oath that he had heard read the foregoing bill of complaint by him subscribed; that he is one of the directors of the complainant, Negaunee Iron Company; that said Mary Kaufman is the president of said Negaunee Iron Company, and is now absent

from the State of Michigan; that he knows the contents of said bill of complaint, and that the same is true, of his own knowledge, except as to the matters therein stated to be upon information and belief, and as to those matters he believes it to be true.

THOMAS GILLESPIE,
Notary Public, Marquette County, Michigan.

EXHIBIT "A."

James L. Reynolds and wife
to
Charles T. Harvey.

This indenture made this twenty-sixth day of February in the year of our Lord one thousand eight hundred and fifty-seven, between James L. Reynolds and Mary G. Reynolds, his wife, of the city of Chicago, county of Cook and State of Illinois of the first part, and Charles T. Harvey of Marquette county, State of Michigan, of the second part. Witnesseth: That the said parties of the first part for and in consideration of the sum of thirty thousand dollars to us in hand paid by the said party of the second part the receipt whereof is hereby confessed and acknowledged have granted, bargained, sold, remised, released, aliened and confirmed and by these presents do grant, bargain, sell, remise, release, alien, and confirm
21 unto the said party of the second part, his heirs and assigns, forever, all the following described lots, pieces or parcels of land situated in the county of Marquette and State of Michigan, to-wit: The west half and the northwest quarter of the southeast quarter, and the southwest quarter of the northeast quarter (400 acres) of section thirty-two (32); also the south half of section number thirty-one (31) (306 29-100 acres), all being in township number forty-eight (48) north of range number twenty-six (26) west, amounting to 706 29-100 acres in the same. Also the east half, and the west half of northwest quarter, and the northeast quarter of northwest quarter (424 68-100 acres) of section number one (1), also the south half of the northeast quarter and the east half of northwest quarter, and the northwest quarter of northeast quarter and the northwest quarter of northwest quarter (227 64-100 acres) of section number two (2); also the northwest quarter and the north half of northeast quarter, and the southwest quarter of northeast (267 94-100 acres) of section number three (3), also the north half of section number four (4) (312 36-100 acres); also the whole of section number five (5) (630 36-100 acres), also the east half and the northwest quarter, and the east half of southwest quarter (540 98-100 acres) of section number six (6), also the south half and the north half of northeast quarter and the south half of northwest quarter and the northeast quarter of the northwest quarter (507 91-100 acres) of section number seven (7); also the west half and the northeast quarter of north-

east quarter, and the northwest quarter of southeast quarter, and the south half of southeast quarter (480 acres) of section number eight (8), all being township number forty-seven (47) north of range number twenty-six (26) west. Amounting to 3391 87-100 acres in the same. Also the west half of
22 northwest quarter (64 21-100 acres) of section number six (6), in township number forty-seven (47) north of range number twenty-five (25) west, containing 64 24-100 acres in the same, all of the above mentioned lands being in the district of lands subject to sale in the United States land office at Sault Ste. Marie, Michigan, and containing in all according to U. S. survey four thousand one hundred sixty-two and 40-100 acres (4162 40-100), which lands are sold with full warranty, subject, however, to the conditions and agreements of the contract marked "A" herewith appended, between the parties hereto, concerning the undiscovered minerals on said lands.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof and all the estate, right, title, interest, claim or demand whatsoever of the said parties of the first part either in law or equity, of, in and to the above released premises with the said hereditaments and appurtenances. To have and to hold the said premises as above described with the appurtenances unto *to* the said party of the second part, and to his heirs and assigns, forever. And the said parties of the first part for their heirs, executors and administrators do covenant and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents, they are well seized of the premises above described as of a good, sure, perfect, absolute and indefeasible estate of inheritance in the law in fee simple, and that the said land and premises are free from all incumbrances whatever and that the above bargained premises in the quiet and peaceful possession of the said party of the second part, his heirs and assigns, against
23 all and every person lawfully claiming or to claim the whole or any part thereof they will forever warrant and defend.

In witness whereof, the said parties of the first part have hereunto set their "hand" and "seal" the day and year first above written.

JAS. L. REYNOLDS. [L. S.]
MARY G. REYNOLDS. [L. S.]

Sealed and delivered in presence of
MARY D. REYNOLDS.
M. H. MAYNARD.

STATE OF MICHIGAN, } ss:
County of Marquette, }

On this twenty-second day of June, in the year one thousand eight hundred and fifty-seven, before me, the subscriber, circuit court

commissioner for said county, personally appeared James L. Reynolds and Mary G., his wife, to me known to be the same persons described in and who executed the within instrument, who severally acknowledged the same to be their free act and deed, and the said Mary G. Reynolds on a private examination by me, separate and apart from her said husband, acknowledged that she executed the same freely, and without any fear of or compulsion from any one.

M. H. MAYNARD,
Circuit Court Commissioner.

"A."

This memorandum of agreement made this 26th day of February, by and between James L. Reynolds of Chicago, State of Illinois, of the first part and Charles T. Harvey of Marquette county, State of Michigan, of the second part.

Witnesseth—That the party of the first part has this day
24 conveyed by "warrantee" deed (to which this contract is attached) to the party of the second part certain lands therein described amounting to four thousand one hundred and sixty-two 46-100 acres, for the consideration of the sum therein named and also in the further consideration of reserving to himself an undivided half interest in and to all the minerals which have been or may be discovered on the premises referred to as conveyed, together with the right of having, or acquiring so much of the surface privileges as may be necessary to mine or develop the same by paying one-half of the equitable or appraised valuation per acre for the surface thus used or acquired. *Provided* not more than twelve dollars per acre shall be adjudged to be the value of unimproved lands taken for such mining purposes, besides which, however, full compensation shall be paid to the party of the second part, or his assigns, for damages which may by such mining or occupancy ensue to the business connected with or improvements placed upon such land, by the party of the second part or his assigns. Such payment to be made by the party of the first part on an equitable, agreed value, or upon an appraised valuation made by disinterested "referees," one designated by each party (hereto) and they choosing a third, and the decision of the three thus chosen to be final. And when such payment is made, he of the first part shall be entitled to enter upon and occupy any portion of said lands for mining purposes as aforesaid solely.

Provided—and it is agreed, however, that the party of the second part, or his assigns, shall have the sole right, free of cost or compensation to the party of the first part, to mine for their own use or for manufacturing purposes, within the present limits of Marquette county, any mineral ores, or marble found on any of the
25 premises herein "referred" to, but shall have no right to sell to other parties for exportation as aforesaid without accounting to the party of the first part for his joint half interest therein.

In witness whereof the parties hereunto have set their hands and seals the day and year first above written.

CHARLES T. HARVEY. [SEAL.]
JAS. L. REYNOLDS. [SEAL.]

A true copy.
Received for record July 3, 1857, at 1 o'clock p. m.

M. H. MAYNARD, *Register.*

EXHIBIT "B."

Articles of Association of the Pioneer Iron Company.

Know all men by these presents, that we, Moses A. Hoppock of New York city, State of New York; William Pearsall of Jersey City, Hudson county and State of New Jersey, and Charles T. Harvey of Marquette county, State of Michigan; have associated and do hereby associate ourselves together for the purpose of forming a mining and manufacturing company for mining and manufacturing iron ore in the upper peninsula of the State of Michigan and organize the same as a body corporate and politic by virtue of and under the provisions of an act passed by the legislature of the said State of Michigan and approved February 5th, 1853; entitled An act to authorize the formation of corporations for mining, smelting or manufacturing iron, copper, mineral, coal, silver or other ores or minerals, and for other manufacturing purposes; and an act supplementary to said act, also passed by said legislature and approved February 6th, 1855, and in pursuance of such design, we do
26 hereby mutually agree upon, enter into, adopt and establish the following articles of association, as required by the provisions of section 4 of the act aforesaid—to-wit:

Article 1.

The name or title of said corporation shall be "The Pioneer Iron Co." and the same is formed for the purpose of procuring a suitable location for a manufactory and lands to furnish coaling facilities therefor in the upper peninsula of the State of Michigan and working the same for the production of merchantable iron and such other use of their lands as the company may hereafter determine and adopt.

Article 2.

The capital stock of said company shall be one hundred and twenty-five thousand dollars, divided into five thousand shares of the par value of twenty-five dollars each.

Article 3.

No part of the capital stock of said company has yet been actually paid in.

Article 4.

The names of the stockholders of said company, their respective places of residences, and the number of shares held by each are as follows, viz.:

Names.	Residences.	No. shares.
Moses A. Hoppock	New York city, N. Y.	1666
Wm. Pearsall	Jersey City, N. J	1666
Chas. T. Harvey	Marquette county, Mich.	1668
Total		5000

Article 5.

The office of said company for the transaction of its business in the State of Michigan shall be kept at the residence of the agent of said company at or near their mining and manufacturing
27 location or at the office of the resident director of said company in the county of Marquette, where the operations and business of said company are to be carried on.

Article 6.

The term of the corporate existence of said company shall be thirty years from the date of these presents.

Article 7.

The board of directors of said company shall consist of seven members.

In witness whereof we have hereunto subscribed our names and affixed our respective seals in the city of New York, this second day of April, 1857.

MOSES PEARSALL. [L. S.]
WM. PEARSALL. [L. S.]
CHAS. T. HARVEY. [L. S.]

Witness:
THOS. F. MASON.
ISRAEL COE.

CITY, COUNTY, AND STATE OF NEW YORK, ss:

Be it known that on the second day of April, 1857, before me, a commissioner for the said State of New York, appointed by the governor of the State of Michigan, to take the acknowledgement and proof of deeds and other instruments in writing under the seal to be used and recorded in said State of Michigan, appeared Moses A. Hoppock: Wm. Pearsall; and Chas. T. Harvey and acknowledged that they executed the foregoing instrument for the uses and pur-

poses therein mentioned, and I further certify that the persons who made said acknowledgment are known to me to be the individuals in and who executed the within instrument.

In testimony whereof I have hereunto set my hand and seal the day and year above written.

ISRAEL COLE,
[L. S.] *Michigan Commissioner.*

28 Office of the Pioneer Iron Co., 189 Broadway.

NEW YORK, *July 13th*, 1857.

I hereby certify that the foregoing is a correct copy of the original articles of association of the Pioneer Iron Co. in my possession, a duplicate of which is on file with the secretary of the State of Michigan, and a triplicate was forwarded to the clerk of the county of Marquette, Michigan, but said to have never been received.

L. T. MERRILL,
Sec'y Pioneer Iron Co.

UNITED STATES OF AMERICA, }
State of New York. }

By this public instrument be it known, to all whom the same doth or may in any wise concern, that I, Edward Payson Clark, a public notary in and for the State of New York, by letters patent under the great seal of the said State, duly commissioned and sworn, dwelling in the city of New York, *do hereby certify*, that on thirteenth day of July, eighteen hundred and fifty-seven, before me personally came: L. T. Merrill, to me known, who did depose and say that the facts set forth in the annexed certificate by him subscribed are true, and that he is the secretary of the Pioneer Iron Company.

[NOT'Y SEAL.]

In testimony whereof, I have subscribed my name, and caused my notarial seal of office to be hereunto affixed, the thirteenth day of July in the year of — Lord one thousand eight hundred and fifty-seven.

EDWARD P. CLARK,
Notary Public for the State of New York.

29 EXHIBIT "C."

Charles T. Harvey
to
Pioneer Iron Company.

Memorandum of a lease and grant made this seventeenth day of September, A. D. 1857. between Charles T. Harvey of Marquette county, Michigan, of the first part and the Pioneer Iron Company of said county of the second part.

Witnesseth, that the party of the first part for and in consideration of the sum of one dollar to him in hand paid by the party of the

second part, the receipt whereof is hereby confessed and acknowledged, has conveyed, assigned and set over and does hereby convey, assign and set over to the party of the second part, certain rights and easements hereinafter described (subject to the provisions and limitations, thereto annexed) in and upon certain pieces or parcels of land known and described as follows, to wit:

The southwest quarter of the southeast quarter and the southwest quarter of section number (5) five, the southeast quarter and the east half of the southwest quarter of section number six, the north half of the northeast quarter and the northeast quarter of the northwest quarter of section number seven and the northwest quarter of the northwest quarter of section number eight, all in township number forty-seven (47) north of range twenty-six (26) west. Containing five hundred and eighty acres. Also the west half of southwest quarter of section number thirty-one (31), town forty-eight north of range twenty-six (26) west, containing sixty-six and 29–100 acres, which are also in the county and State aforesaid.

The rights and easements aforesaid being: 1st. The right
30 to cut and remove all the timber and wood standing or otherwise being on said lands for the purpose of converting the same into charcoal or such other uses as may be desirable in the prosecution of business by the party of the second part. Such wood and timber to be removed from said lands within five (5) years from the date hereof at such times within that period as the party of the second part may elect, in the following order, however, viz:

After clearing its own land on section six (6), T. 47 N. R. 26 W., the party of the second part shall next remove the timber and wood from the land in that section herein described until it is all removed. Then it shall remove that on land in section seven herein described. Then that on section eight in like manner. Then that on section five first clearing that on its own land in the same and lastly that on section thirty-one T. 48, N. R. 26 W. (This last stipulation, however, to be subject to future agreements between the parties hereto.

2nd. The party of the first part does hereby let, lease and demise to the party of the second part for the consideration hereinbefore mentioned and for the full end and term of ninety-nine years from and after the date hereof. All the lands hereinbefore mentioned and all other lands now owned by the party of the first part in either of the townships above mentioned for the sole purpose of mining and quarrying at its own expense such ores and marble as may be found thereon and subject to the provisions hereinafter mentioned, viz:

Provided, it shall not quarry, mine or remove any ores on said lands except such as it shall actually convert into merchantable iron in its own furnaces or forges, and provided further it shall not in such mining or quarrying operations use or injure any of the improvements which may be placed upon said lands by other
31 persons without paying just and equitable damages therefor, nor shall it occupy in such operations more land than is ab-

solutely necessary to open and work successfully such mines of iron or marble as may be discovered. And it shall purchase and pay at the rate of twelve (12) dollars per acre for unimproved lands which it may require for such purposes. The rights and easements above mentioned shall descend to the corporate successors of the party of the second part, but not to its assigns. The party of the first part hereby agrees and binds himself in nowise to convey or encumber any of the lands hereinbefore mentioned except with a reservation of *a* rights and easements hereby secured and intended to be secured to the party of the second part. All the above rights and easements are subject, however, to the terms of a certain deed and an agreement, accompanying the same, executed by James L. Reynolds and wife to the party of the first part on the twenty-sixth day of February, A. D. 1857, and recorded in register's office of said county in Liber "B" of Deeds on pages 381 and 382, to which record for further particulars reference is hereby made.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

CHARLES T. HARVEY. [L. S.]

Executed in presence of

JNO. B. WARD.
M. H. MAYNARD.

STATE OF MICHIGAN, } ss:
Marquette County, }

On this seventeenth day of September, A. D. 1857, before me, a circuit court commissioner in and for said county, personally came Charles T. Harvey, known to me to be the person who executed the within instrument and acknowledged the same to be his free act and deed.

MATTHEW H. MAYNARD,
Circuit Court Commissioner.

The above instrument was received and recorded this seventeenth day of September, A. D. 1857, at six o'clock p. m.

M. H. MAYNARD, *Register.*

(Endorsed:) Filed March 3, 1900. Wm. A. Ross, register.

32 *Order.*

STATE OF MICHIGAN:

Circuit Court for the County of Marquette. In Chancery.

NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG, and MARY Kaufman, Complainants,
vs.
IRON CLIFFS COMPANY, THE CLEVELAND-CLIFFS IRON COMPANY, William G. Mather, and Murray M. Duncan, Defendants.

On reading and filing the bill of complaint and the affidavits of Charles C. Jones & Edward N. Breitung in the above entitled cause, on motion of S. W. Shaull, Esquire, solicitor for the complainants, it is

Ordered, that said defendants show cause, if any they have, before the undersigned, circuit judge, at his office in the court house in the city of Marquette, on the 12th day of March, A. D. 1900, at 9 a. m. o'clock of that day why the application of the complainants for an order restraining the said defendants and each of them from entering upon the lands of the complainants specifically described in said bill of complaint, and from mining or taking therefrom any iron or marble, or from injuring the surface thereof by exploring thereon, or from in anywise interfering with the complainants' possession thereof, until the further order of the court.

And it is further ordered that the complainants cause a copy of this order, together with a copy of said bill of complaint to be personally served upon said Murray M. Duncan on or before the fifth day of March, A. D. 1900.

Dated this 3rd day of March, 1900.

(Signed) J. W. STONE,
Circuit Judge.

33 *Affidavit.*

STATE OF MICHIGAN:

In the Circuit Court for the County of Marquette. In Chancery.

NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG, and MARY Kaufman, Complainants,
vs.
IRON CLIFFS COMPANY, THE CLEVELAND CLIFF IRON COMPANY, Wm. G. Mather, and Murray M. Duncan, Defendants.

STATE OF MICHIGAN, *County of Marquette,* } *ss:*

Charles C. Jones, of said county, being by me first duly sworn, deposes and says, that, he is a mining engineer and is and has been

for more than three months last past entirely familiar with all the lands described in the bill of complaint filed in this cause.

Deponent further says that certain persons under the immediate control and direction of one, Thomas Buzzo, whose names are unknown to deponent, have been ever since January 2nd, A. D. 1900 engaged in tearing up the soil, sinking test pits, cleaning out and reconstructing shafts and openings upon said lands, and sinking new shafts thereon. That they have erected and are erecting shanties, engine houses, boiler sheds and other structures upon said lands. That they are covering parts and portions of the surface of said lands heretofore used for agricultural purposes with debris and rock. That this deponent called upon the said Thomas Buzzo, who is in charge of said laborers so prosecuting the said works, upon this day, and stated in substance to the said Buzzo that he, this deponent, noticed new boilers were being installed and their mining appliance- were being added to and the location of the diamond drill was being changed on the New York hematite "forties," so called, being the southwest quarter of the southeast quarter and the southeast quarter of the southwest quarter of sec-
34 tion six (6) town forty-seven (47) range twenty-six (26), and asked him, the said Buzzo, whether said work was of a permanent character and whether he intended to continue the prosecution thereof, whereupon said Buzzo in substance replied that, he was working under the orders and instructions of one Murray M. Duncan, being the same identical Murray M. Duncan mentioned as a defendant in the said bill of complaint, and that, while he had definite instructions from the said Murray M. Duncan in regard to said work, he was not at liberty to disclose them, but, that this deponent would have to apply to the said Murray M. Duncan for any information in regard to said work; and that, he, the said Buzzo, would continue to prosecute said work until ordered to desist therefrom by the said Murray M. Duncan. And deponent fu-ther says, that the said Buzzo upon being pressed by this deponent as to how far he would persist in the prosecution of said work, repeatedly reiterated to this deponent that he was instructed to continue said work by Murray M. Duncan and would continue in the prosecution thereof until such time as the said Murray M. Duncan should order him, the said Buzzo, to desist therefrom. Deponent further says that the said Buzzo then and there informed this deponent that he, the said Buzzo, had full and complete charge of said work under said Duncan. Deponent further says that the said Buzzo and the men under him are now sinking several shafts, driving tunnels and doing other work upon different parts of the land described in the annexed bill of complaint. And further deponent says not.

(Signed) CHARLES C. JONES.

Subscribed and sworn to, before me, a notary public in and for said county on this third day of March A. D. 1900.

(Signed) THOS. GILLESPIE,
Notary Public, County of Marquette.

35 *Affidavit.*

STATE OF MICHIGAN:

In the Circuit Court for the County of Marquette. In Chancery.

NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG, and MARY Kaufman, Complainants,
vs.
IRON CLIFFS COMPANY, THE CLEVELAND-CLIFFS IRON COMPANY, Wm. G. Mather, and Murray M. Duncan, Defendants.

STATE OF MICHIGAN, *County of Marquette,* } *ss:*

Edward N. Breitung, being first duly sworn, deposes and says, that he is well acquainted with Murray M. Duncan, one of the defendants mentioned in the annexed bill of complaint, that this deponent has received from said Murray M. Duncan, a letter or letters in which the said Murray M. Duncan represents himself as agent of The Cleveland Cliffs Iron Company and The Iron Cliffs Company, two of the defendants mentioned in the annexed bill; and, that the said Murray M. Duncan has represented to this deponent that he is agent for said companies, and this deponent verily believes and charges the truth to be that the said Murray M. Duncan is in fact agent for the Cleveland Cliffs Iron Company and the Iron Cliffs Company aforesaid. Further deponent says not.

(Signed) EDWARD N. BREITUNG.

Subscribed and sworn to before me, a notary public in and for said county, on this — day of March, A. D. 1900.

(Signed) THOS. GILLESPIE,
Notary Public, Marquette County.

36 *Affidavit.*

STATE OF MICHIGAN:

In the Circuit Court for the County of Marquette. In Chancery.

NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG, and MARY Kaufman, Complainants,
vs.
IRON CLIFFS COMPANY, THE CLEVELAND CLIFFS IRON COMPANY, Wm. G. Mather, and Murray M. Duncan.

STATE OF MICHIGAN, *County of Marquette,* } *ss:*

Charles C. Jones being first duly sworn deposes and says, he is a mining engineer in the employ of Edward N. Breitung and this

deponent, as such engineer in said capacity was, for and on behalf of the said Edward N. Breitung, for two months and more, prior to the first day of January, 1900 preparing to start active operations upon January 1st, 1900 upon the lands described in the bill of complaint heretofore filed in this court in the above entitled cause. Deponent further says, that said Edward N. Breitung had engaged a mining captain to oversee the development of the iron ore which was or might be found upon said lands and that the same was done prior to the time the parties hereinafter specified took possession of the parts and portions thereof as hereinafter detailed.

Deponent further says, that he had occasion to go over said land repeatedly and note the developments for mining purposes which existed thereon prior to the time the parties hereinafter specified took possession of parts thereof. And, that, among other things which deponent observed and ascertained from inquiry, by way of developments existing thereon and belonging to the owners of the fee, on the southwest quarter of the southeast quarter of section six (6) was a shaft which had been, for several years, constructed, as deponent is informed and believes, about 30 feet deep and had a cross-cut at the bottom thereof to the south about 30 feet, that the hoisting engine and the house used in sinking this shaft and covering said engine are still in place, also close by said house was an excavation on south side of track to Palmer from which 10 R. R. loads of merchantable iron ore were mined and shipped and at the point aforesaid was a prospect shaft.

37

On the northwest quarter of the northeast quarter of section seven (7) in the angle between the Lake Superior & Ishpeming Railroad track and the railroad track leading to Palmer, Michigan, was a shaft 12 by 12 feet and deponent is informed that the same is 45 or 50 feet deep and that the same is bottomed in iron ore.

On the southwest quarter of the northwest quarter of section eight (8), are the remains of the former extensive surface workings from which merchantable iron ore had been mined and sold. On the northeast quarter of the northwest quarter of section eight (8) was a shaft down about twenty-five feet and bottomed in lean ore, and the same having been sunk in 1882 and 1883 by Foley and others, as deponent is informed, and also a number of open pits from which ore had been at some previous time removed. On the northwest quarter of the northwest quarter of section eight (8) were a number of open pits showing lean ore.

On the north side of the northeast quarter of the northeast quarter of section seven (7) was an open pit and tunnel from which at some previous time iron ore had been mined and carried away.

All of said lands being in township forty-seven (47) north of range twenty-six (26) west.

Deponent says certain workmen headed by one Buzzo, as deponent is informed and believes, came upon the lands described in the bill of complaint heretofore filed in this cause and took possession on or about the first day of January , 1900 of parts and por-

tions of said lands including some of the explorations above
38 described, and among other things, erected upon said lands four (4) small shanties about 12 feet square. That said shanties were brought upon said lands constructed except that they were in knockdown form and were bolted together after being brought upon said lands. That one of said shanties was placed on the southeast quarter of the southwest quarter of section six (6) near the railroad water tank; one thereof was placed on the southwest quarter of the northwest quarter of section eight (8) near Partridge brook; and one thereof was placed on the northwest quarter of the northwest quarter of section eight (8) near the southeast corner thereof; and one thereof was placed on the northeast quarter of the northeast quarter of section seven (7) near the northeast quarter thereof. That this deponent went upon said lands on January 3rd 1900 and found said shanties erected and in the possession of certain men who were then and there working at various places upon said lands and were at least fifteen (15) in number. That said shanties were placed upon said lands so quietly and surreptitiously that although this deponent had been visiting said lands nearly every day for some weeks immediately preceding the week following Christmas, 1899, this deponent had received no intimation or hint that any such move was contemplated, that they had then taken possession of parts of the work, hereinbefore described, and were proceeding to continue such work on the southwest quarter of the northwest quarter of section eight (8) and were beginning thereon a new tunnel or drift in the bluff near Partridge brook, and were sinking test pits thereon higher up the hill:—

On the northwest quarter of the northwest quarter of section eight (8) they were sinking a new shaft and on the northeast quarter of the northwest quarter of section eight (8) they were sinking a test pit. And on the southwest quarter of the southeast quarter of section six (6) they had begun a new shaft about 125 feet
39 north of shaft hereinbefore specified. That on the sixth day of January, 1900 the men so working upon said property abandoned the new exploratory shaft which they were sinking on the southwest quarter of the southeast quarter of section six (6) and took possession of the shaft first above described situated on the southwest quarter of the southeast quarter of section six (6) and have enlarged it to a shaft 6 x 12 in size and the same is down about 50 feet and is being rapidly deepened by said workmen and is now bottomed in iron ore and ore, rock and debris is being hoisted therefrom and mixed and dumped by said workmen upon and scattered over the surface of said land.

Deponent further says that the exploration so abandoned on January sixth aforesaid was an open pit about 15 feet deep and 8 feet square and now is unprotected and uncovered and that the dirt and debris therefrom is scattered over the surface of said lands adjacent thereto.

Deponent further says that they have now opened a tunnel on the

southwest quarter of the northwest quarter of section eight (8); that said tunnel is 6 feet high and about 10 feet deep; that the rock and debris from said tunnel has been dumped upon the surface of said land. That said workmen have also sunk a series of test pits upon the last described parcel of land, tearing up the surface thereof and dumping the dirt and debris upon and scattering the same over the surface thereof. That said workmen have also sunk a shaft about 5 x 5 feet square to a depth of 25 feet upon the northwest quarter of the northwest quarter of said section eight (8) near the southeast corner thereof and that the dirt and debris therefrom has been scattered over the surface of said last described parcel of land. About 300 feet north of the last aforesaid test pit and on the same description of land, said workmen have sunk a shaft about 6 x 12 feet and that the same is now down to a depth of at least 50 feet and is bottomed in iron ore and that the same is now being rapidly
40 deepened by said workmen who are now scattering the ore, and rock and earth therefrom over the surface of said land. That said workmen have also sunk on the northeast quarter of the northwest quarter of section eight (8) a test pit 8 x 8 feet in size to a depth of 10 feet scattering the rock and debris therefrom upon and over the surface of said lands. That upon the last above described land the shaft heretofore referred to, constructed by Foley and others in 1882 and '83 as aforesaid, has been enlarged by said workmen to a shaft 6 x 10 feet in size, has been deepened to at least fifty feet and is now being rapidly deepened by said workmen, the same being now in iron ore, and ore is now being hoisted therefrom and the rock, earth, ore and debris therefrom now being scattered by said workmen over and upon the surface of said land. That said workmen have removed one of said shanties to a point near this shaft and have erected an engine and boiler house near the same and have placed therein a boiler and hoisting engine and have placed pumps in the shaft to keep the same free from water.

Deponent further says that there is upon the northeast quarter of the northeast quarter of section seven (7) a tunnel which has been constructed thereon for some years and from which merchantable iron ore has been heretofore shipped, and that said workmen have taken possession thereof and are now removing ore therefrom and are enlarging and deepening the same and are dumping the ore removed from said tunnel upon the surface of said land. That upon the southeast quarter of the southeast quarter of section six (6) in the tillable field said workmen have sunk a test pit to a depth of some feet scattering the rock, earth and debris therefrom upon and over the surface of said tillable land. And that said workmen have also sunk in meadow land on the southwest quarter of the southeast quarter of section six (6) a pit several feet in depth and have scattered the rock, earth and debris therefrom over and upon the
41 surface of sais meadow land and the grass growing thereon. That the said workmen have erected a windlass over the shaft hereinbefore specified on the northwest quarter of the northeast

quarter of section seven (7) and that about fifteen (15) men are now engaged in said work. Further deponent says not.

(Signed) CHARLES C. JONES.

Subscribed and sworn to, before me, a notary public in and for said county on this eighth day of March, A. D., 1900.

(Signed) THOMAS GILLESPIE,
Notary Public, Marquette County, Mich.

42 To the within named defendants:

Take notice that in addition to the affidavits heretofore filed in support of the order heretofore made in the within entitled cause, to show cause, if any there be, why a restraining order should not issue therein, to be heard March 12th, 1900, at 9 o'clock a. m., the affidavit of which the foregoing is a true copy has been filed in support of said motion and will be read in support of said motion at the hearing thereof.

Yours, &c.,

(Signed) S. W. SHAULL,
Solicitor for Complainants.

Dated March 8th, 1900.

43 STATE OF MICHIGAN, } ss:
County of Marquette, }

Charles C. Jones being by me first duly sworn, deposes and says that on the eighth day of March, 1900 at the city of Ishpeming, in said county, he did serve a copy of the within and foregoing affidavit personally on Murray M. Duncan, one of the defendants in the within entitled cause, being the same identical Murray M. Duncan mentioned in the order heretofore made in the within entitled cause, the same being served at the city of Ishpeming in the county of Marquette aforesaid, by then and there, at the place and on the date above mentioned, delivered personally to the above named Murray M. Duncan the said above described copy of the foregoing affidavit. And further deponent says not.

(Signed) CHARLES C. JONES.

Subscribed and sworn to before me, this ninth day of March, A. D. nineteen hundred.

(Signed) THOMAS GILLESPIE,
Notary Public, Marquette County, Michigan.

44 In the Circuit Court for the County of Marquette. In Chancery.

NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG, and MARY Kaufman, Complainants,
vs.
THE IRON CLIFFS COMPANY, THE CLEVELAND CLIFFS IRON COMPANY, Wm. G. Mather, and Murray M. Duncan, Defendants.

It is hereby stipulated that the defendants appear in this cause by George Hayden, their solicitor, that the pleadings by defendants be put in by April tenth (10th) 1900; that thereupon if complainants wish to have a hearing on the order to show cause why an injunction should not issue as prayed for in the bill, the same shall be heard as soon after said April tenth as the court or judge thereof shall — ready to hear the same and the complainants shall find it convenient and the hearing on said order to show cause is postponed accordingly.

Dated March 12th, 1900.

(Signed) GEO. HAYDEN,
Solicitor for the Above-named Defendants.

(Signed) S. W. SHAULL,
Solicitor for Above-named Complainants.

45 *Subpœna.*

STATE OF MICHIGAN:

In the Circuit Court for the County of Marquette. In Chancery.

In the name of the People of the State of Michigan:

To Iron Cliffs Company, a corporation; the Cleveland Cliffs Iron Company, a corporation; William G. Mather, and Murray M. Duncan, Greeting:

You are hereby notified that a bill of complaint has been filed against you in the circuit court for the county of Marquette, [SEAL.] in chancery, by Negaunee Iron Company, Edward N. Breitung and Mary Kaufman as complainants, and that if you desire to defend the same you are required to have your appearance filed or entered in the cause in accordance with the rules and practice of the court in person or by solicitor within fifteen days after service of this subpœna upon you. Hereof fail not under the penalty of having said bill taken as confessed against you.

The return day of this writ is the nineteenth day of March A. D. one thousand nine hundred.

Witness: the Honorable J. W. Stone, circuit judge at the court house in the city of Marquette, in said county, this fifth day of March, A. D. one thousand nine hundred.

(Signed) WM. A. ROSS, *Register.*

Underwriting; a personal decree is sought against all the defendants and the bill is filed to reach interests in property and not to obtain any further relief against the remainder of the defendants.

(Signed) S. W. SHAULL,
Solicitor for Complainants.

Business address, Marquette, Mich.

46 STATE OF MICHIGAN, } ss:
County of Marquette, }

I hereby certify and return, that, on the seventh day of March, A. D. nineteen hundred, at the city of Ishpeming, I served the within subpœna, personally on Murray M. Duncan, one of the within named defendants, by then and there, at the place and on the date above mentioned delivering to said Murray M. Duncan, a true copy of the said subpœna, inscribed "Copy" and subscribed S. W. Shaull, complainants' solicitor, and by showing at the same time to the said above named Murray M. Duncan, the said subpœna, with the seal of the court impressed thereon, on which copy so served was a true copy of the underwriting on said subpœna.

I further certify and return, that, on the eighth day of March A. D., nineteen hundred, at the city of Ishpeming, in said county, I served the within subpœna, personally on one of the within named defendants, The Cleveland Cliffs Iron Company, by then and there delivering at the place and on the date above mentioned to said Murray M. Duncan, who was then and there agent of said, The Cleveland Cliffs Iron Company, a true copy of said subpœna, inscribed "Copy" and subscribed S. W. Shaull, complainants' solicitor, and by showing at the same time to said defendant, Murray M. Duncan, the said subpœna with the seal of the court impressed thereon, on which copy so served was a true copy of the underwriting on said subpœna.

And, I further certify and return, that, on the eighth day of March A. D., nineteen hundred, at the city of Ishpeming, in said county, I served the within subpœna, personally, on one of the within named defendants, Iron Cliffs Company, by then and there delivering at the place and on the date above mentioned, to said Murray M.
47 Duncan, who was then and there agent of said Iron Cliffs Company, a true copy of said subpœna, inscribed "Copy" and subscribed S. W. Shaull, complainants' solicitor, and by showing at the same time to said defendant Murray M. Duncan the said subpœna with the seal of the court impressed thereon, on which copy so served was a true copy of the underwriting on said subpœna.

And I further certify and return, that, I made diligent search and inquiry for the said William G. Mather, one of the defendants named in said subpœna, during the entire life of said subpœna, and that, after such search and inquiry, during said time, I was unable to serve the within subpœna upon said William G. Mather during the life of said subpœna, for the reason that I could not find the said William G. Mather within the jurisdiction of this court, during the life of said subpœna.

(Signed) JOHN CARLSON, *Sheriff.*

Dated March 21st, A. D. 1900.

My Fees.

Service	$1.25
Travel	1.60
Copies	.75
Total	$3.60

(Endorsed:) Filed March 21st, 1900. A. A. Ellison, deputy register.

48 *Answers.*

STATE OF MICHIGAN:

In the Circuit Court for the County of Marquette. In Chancery.

THE NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG, and Mary Kaufman, Complainants,
vs.
MURRAY M. DUNCAN, THE IRON CLIFFS COMPANY, THE Cleveland Cliffs Iron Company, and William G. Mather, Defendants.

The separate several answers of said Murray M. Duncan, one of said defendants, to the bill of complaint of said complainants.

This defendant, not confessing the many errors and insufficiencies in the said bill contained, and praying by this answer the benefit of a demurrer to the said bill of complaint, for want of equity and want of sufficiency, for answer thereto says:

(1.) He admits paragraph one of the bill.

49 (2.) On information, believed to be true, he admits the conveyance mentioned in paragraph second of the bill, as set forth in Exhibit A, thereto annexed, but denies that the reservations mentioned therein constitute an exception from the grant.

(3.) On information, which he believes to be true, he admits the allegations of paragraph third of the bill, as to the date and manner

of organization of said Pioneer Iron Company in the year 1857, and admits that said Pioneer Iron Company became at that date a corporation, but he denies that Exhibit B, referred to in said paragraph, correctly sets forth the status of the corporate character and existence of said Pioneer Iron Company, and he denies that the bill of complaint has anywhere set forth fully and truly the files or records in the office of the county clerk of Marquette county or in the office of the secretary of state of Michigan, where the same are required to be kept, and constituting under the law the charter and corporate character of the Pioneer Iron Company at the time of filing said bill, and denies that the said paragraph third or the said Exhibit B set forth fully or truly the corporate character of said Pioneer Iron Company, as the owner of the property rights, estates and privileges mentioned and referred to in paragraph fourth of the bill, and in Exhibit C, annexed to said bill.

(4.) On information, which he believes to be true, this defendant admits the agreement set forth in Exhibit C, annexed to the bill, which said agreement, as defendant is informed and verily believes, and so alleges, conveyed to said Pioneer Iron Co. an estate, as in and by said agreement and conveyance fully appears, but he denies all the other allegations of paragraph fourth of the bill not hereinbefore expressly admitted.

50 (5.) This defendant was not and is not a party to any conveyance set forth in paragraph fifth of the bill, nor was the Pioneer Iron Company, for which company this defendant, in the acts and doings set forth in said bill, acted merely as an agent, a party to any said conveyances, and this defendant has no knowledge sufficient upon which to make answer as to the several allegations contained in said paragraph fifth of the bill, and so neither admits nor denies the same, and leaves complainants to their proof thereof.

(6.) This defendant denies the allegations of paragraph sixth of the bill as there stated.

(7.) This defendant is informed and believes that said Pioneer Iron Company erected two stacks at Negaunee, in said county, as stated in paragraph seventh of the bill, but denies all other allegations of paragraph seventh, as therein stated.

(8.) Defendant admits that said Pioneer Iron Company carried on business for many years, as set forth in paragraph eighth of the bill, but denies all other allegations of said paragraph eighth, as there stated.

(9.) This defendant, on information, which he believes to be true, denies the allegations of paragraph ninth of the bill.

(10.) Defendant is informed and believes that the Pioneer Iron Company, sometime about the date set forth in paragraph tenth of the bill, made a certain lease to the Iron Cliffs Company, as therein stated, of its furnace property, but on like information he denies all the other allegations of paragraph tenth of the bill as therein stated.

(11.) This defendant, also on information and belief, denies the allegations of paragraphs eleventh and twelfth, as therein stated.

(12.) This defendant denies the allegations of paragraph thirteenth of the bill. He denies that said corporation, the Pioneer Iron
51 Company, is dissolved or is not now in existence, as alleged in said paragraph thirteenth; he denies that any of the rights, interests and property of the said Pioneer Iron Company, under and by virtue of said agreement and conveyance, Exhibit C of the bill, ever were terminated or are now terminated and extinguished, and he denies that the rights and interests and property of said Pioneer Iron Company reverted to or became vested in said Charles T. Harvey, or his grantees, but on the contrary, (because equity abhors a forfeiture, and because said Pioneer Iron Company is not shown in or by said bill to have done anything to merit a forfeiture, and because its property rights and interests, under and by virtue of said agreement and conveyance were not forfeitable, and because the allegations of said bill of complaint, touching the alleged termination or forfeiture of the rights of said Pioneer Iron Company are not true,) is still the owner of said property, rights and interests, granted and conveyed in and by said agreement; and he is informed and believes that the complainants have at all times recognized, not only the existence of said Pioneer Iron Company, but its ownership of the property rights and interests conveyed by the said agreement, Exhibit C.

(13.) On information, which he believes to be true, this defendant denies the allegations of paragraphs fourteenth and fifteenth of the bill, as therein alleged.

(14.) This defendant admits that the complainants, Breitung and Mary Kaufman, acting with N. M. Kaufman, another member of their family, promised to William G. Mather a lease and conveyance for the mining of iron ore from a portion of the land covered by said conveyance, Exhibit C of the bill, which lease was to convey to said Mather rights and interests, different from and greater in extent than those conveyed to said Pioneer Iron Company
52 in said agreement, Exhibit C of the bill, and as to which promise it was of no concern to the promissors, the said Edward N. Breitung, the said Mary Kaufman and N. M. Kaufman, who acted with them, what right the said William G. Mather might obtain from the said Pioneer Iron Company in addition to the lease and conveyance so promised by them, but the said Edward N. Breitung, Mary Kaufman and N. M. Kaufman, who own all the stock of said Negaunee Iron Company, but who made the promise as aforesaid, absolutely for themselves and for every interest they represented, and who repeated said promise several times during the course of a year, finally without reason refused to comply with such promise. That said promise was made to this defendant, acting in behalf of said William G. Mather, and defendant is informed and believes that it was also made to said William G. Mather and to other persons also acting in behalf of said William G. Mather; and

the defendant further answering said paragraph sixteenth says that no reason was ever given by said promissors for breaking said promise, and for not complying with the same. This defendant also admits that he himself, as agent for the Pioneer Iron Company, is now, and has been, since December last, actively engaged in conducting mining operations on some of the lands covered by said conveyance, Exhibit C, for the purpose of discovering iron ore in said lands, to be used in the furnaces of said Pioneer Iron Company. That said lands are all wild lands, undeveloped; no mines of iron ore are in existence thereon, and no iron ore in minable quantities is known to exist therein, but that said Pioneer Iron Company, acting through this defendant as its agent in personal charge of said work, is endeavoring to discover said iron ore for the purpose aforesaid, in doing which work no injury is being done to said land, but on
53 the contrary the said land which is of no value except iron ore be found therein, is benefited by the exploration conducted by said Pioneer Iron Company; that if iron ore is discovered in said lands sufficient in quantity or quality for mining, the said Pioneer Iron Company intends immediately, on ascertaining how much of the surface will be required for mining operations, to purchase and pay or tender to the owner or owners entitled thereto, the price for such surface, as provided for in said agreement, Exhibit C; and this defendant further admits that said Pioneer Iron Co. proposes to continue such exploration until it finds iron ore in said lands to be used in its furnaces as aforesaid, or the non-existence of such iron ore be shown. And this defendant denies all other allegations of paragraph sixteenth of the bill not in this paragraph expressly admitted.

(15.) This defendant admits that all of said lands are mineral lands, so-called, inasmuch as they lie in a mineral district, and their only value is now at this time for iron ore which may be found therein, but this defendant denies that either large or valuable or minable deposits of iron ore are known to exist therein, and he denies all other allegations of paragraph seventeenth of the bill.

(16.) This defendant denies all the allegations of paragraph eighteenth of the bill, as therein stated, except as the same may have been expressly hereinbefore admitted.

(17.) As this defendant is informed and believes, he denies the allegations of paragraph nineteenth of the bill. And this defendant further denies that the complainants or any of them, are now in possession of said property in which the said Pioneer Iron Co., acting through this defendant as its agent, is engaged in exploration work, but says that the said Pioneer Iron Co. is in the actual and
54 exclusive possession thereof, for the purpose of exploration and discovery of iron ore, and except as above admitted this defendant denies all the allegations of paragraph twentieth of the bill.

(18.) This defendant denies all the matters of law set forth in the twenty-first paragraph of the bill, and insists that all the allegations

of said twenty-first paragraph of the bill are merely matters of law and impertinent.

(19.) And this defendant, further answering, says that he has no personal interest in the matters set forth in said bill to any extent whatever, but that in all his actings and doings he is merely the agent of said Pioneer Iron Co. and the agent only of said Pioneer Iron Co., and of no other corporation or person whatsoever, and that no other corporation or person, except said Pioneer Iron Co. is engaged in, or has directed the actings and doings of this defendant as aforesaid, or any of the operations and explorations being conducted on said land.

Wherefore, this defendant prays to be hence dismissed with his proper costs and charges in this behalf wrongfully sustained.

MURRAY M. DUNCAN,
By GEO. HAYDEN, *His Solicitor.*

GEO. HAYDEN,
Solicitor for Def't.
M. M. DUNCAN,
Business Address, Ishpeming, Mich.
HOYT, DUSTIN & KELLEY, *Of Counsel.*

55 *Affidavit.*

STATE OF MICHIGAN:

In the Circuit Court for the County of Marquette. In Chancery.

THE NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG, and Mary Kaufman, Complainants,
vs.
THE IRON CLIFFS COMPANY, THE CLEVELAND CLIFFS IRON COMPANY, William G. Mather, and Murray M. Duncan, Defendants.

STATE OF MICHIGAN, *County of Marquette,* } *ss:*

Murray M. Duncan, one of said defendants, being duly sworn, deposes and says that he has read the bill of complaint in this cause, and he has also read the affidavits of Edward N. Breitung and Charles C. Jones, served upon him in support thereof. This deponent denies that he has refused to furnish to complainants or any of them the names of the officers or directors of the Pioneer Iron Company. He admits that under his direction, exploring operations for the finding of iron ore for the purpose of mining the same have been commenced upon said lands, described in the bill of complaint, or some of them, but said work was undertaken by the Pioneer Iron Company, mentioned in said bill of complaint, and

everything done by this deponent thereabout, and by the men under his orders, was and is being done for said Pioneer Iron Co., and not for the Iron Cliffs Co. nor the Cleveland Cliffs Iron Co., nor for said William G. Mather, nor this deponent personally. That all the operations begun and carried on upon said lands were begun and are now being carried on at the sole instance of said Pioneer Iron Co., and of no other person or corporation whatever, and
56 neither this deponent nor said William G. Mather nor said Cleveland Cliffs Iron Co., nor said Iron Cliffs Co. have any interest therein except as they, or some of them, may be interested as stockholders or officers of said Pioneer Iron Co.

This deponent further says that said Pioneer Iron Co. is a corporation under the laws of this State and doing business under the laws of this State, and that its articles of association and amendments thereto, with articles extending its corporate existence, will be found on file in the office of the clerk of said county of Marquette, and the secretary of state of Michigan, to which, for further particulars, this deponent refers; that this deponent, M. M. Duncan, is the agent of the mineral department of said Pioneer Iron Co. and in charge of its mineral business in this county. That Samuel Redfern of Negaunee is now, and has been for many years, the agent of the land department of said Pioneer Iron Co.

This deponent further says that when, under his charge and direction, the mining exploring operations were begun upon said lands as set forth in said bill and affidavits, said lands were barren and wild lands, and had been so for many years, with no mines opened thereon, with no explorations being conducted thereon, and no use being made thereof for any purpose, as this deponent is informed and believes.

This deponent further says he visited said lands before commencing operations thereon with a number of his men, engineers and others, and thoroughly looked the same over before commencing operations.

This deponent further says that he never represented to said Edward N. Breitung, in connection with any operations on said lands, that he, deponent, was agent of, or represented either the Iron Cliffs Co. or the Cleveland Cliffs Iron Co.; but, on the contrary, in re-
57 spect to all operations conducted on said lands by or under the direction of this deponent, he at all times represented to said Breitung that he was agent of the Pioneer Iron Co., all of which said Breitung well knew.

Annexed hereto are copies of correspondence between this deponent, acting for the Pioneer Iron Co., and said complainants.

This deponent further says that said operations are being conducted with the purpose on the part of said Pioneer Iron Co., in good faith to discover ore for use in the furnace of said company in said Marquette county, and such as it may also hereafter require in said county. That said Pioneer Iron Co., already owns one furnace in said Marquette county, to-wit, the pig iron furnace located at

Marquette, Michigan, in which it desires to use the iron ore which it may be able to find and mine from said lands.

He further says that the said Pioneer Iron Co. is the sole owner of the ninety-nine year lease described and set forth in said bill of complaint.

He further says that no injury is being done to the lands described in said bill of complaint, by the explorations being conducted thereon by the Pioneer Iron Co. He further says that said lands contain no improvements, at least none of any value whatever, and that said lands are now recognized as having no value except for mineral, provided any may be found therein, and have a speculative value for that purpose only, and exploration of said lands would serve to enhance their value rather than to damage or injure the same in any possible way, and the complainants are not injured by any of the acts or things being done upon said lands with reference to any right, title or interest of the complainants therein, of which they have no right to complain of said Pioneer Iron Co., as the owner of said lease. Everything being done
58 upon said lands, under the direction of this deponent for said Pioneer Iron Co., is in strict accordance with the methods for exploring lands for iron ore, and no acts or things have been or are now being done thereon to cause any unnecessary scattering of dirt upon the surface, nor is any waste being committed, nor is said Pioneer Iron Co. doing anything to in any way injure said property, as property valuable only for minerals.

MURRAY M. DUNCAN.

Subscribed and sworn to before me this 12 day of March, A. D. 1900.

ANSON B. MINER,
Notary Public.

MARQUETTE, MICH., *July 18th*, 1900.

Pioneer Iron Company, Negaunee, Mich.

GENTLEMEN: We received yesterday a notice signed Pioneer Iron Company, M. M. Duncan, agent, the same being dated January 15th, 1900, in which we are informed that the Pioneer Iron Company has entered on the S. E. ¼ of the N. W. ¼ and the south half of the N. W. ¼ of section 8, town 47 north, of range 26 west, for the purpose of exploring for iron ore to be used in the furnace of the Pioneer Iron Company in Marquette county under a lease executed by Charles T. Harvey under date of September 17th, 1857, you are hereby notified that said lease has no validity or force whatever.

We have already warned you that the Pioneer Iron Company has no rights whatever in or to the lands owned by us in section 6–7 and 8 in township and range above mentioned, either by virtue of said lease or in any other way, and to desist from its unwarranted trespasses upon our said lands, which warning we now repeat, and notify

you that you are acting at your own peril in this matter, and must take the consequences of your acts. We object to your spending any money on said lands or any part thereof, and warn you that
59 we must resort to the courts for relief from your acts in relation to said lands, if you persist in such *unwarned* trespasses.

(Signed) THE NEGAUNEE IRON COMPANY,
By A. B. ELDREDGE,
Its Attorney in Fact.

(Signed) MARY KAUFMAN,
By A. B. ELDREDGE,
Her Attorney in Fact.

(Signed) EDWARD N. BREITUNG.

(Copy.)

ISHPEMING, MICH., *Jan. 15th*, 1900.

To the Negaunee Iron Co. and Edward N. Breitung:

Please take notice that the undersigned Pioneer Iron Co. has entered upon the following described lands, situated in the city of Negaunee, county of Marquette and State of Michigan, to-wit:

The northeast quarter of the northwest quarter (N. E. ¼ of N. W. ¼) of section 8, and the south half of the northwest quarter (S. ½ of N. W. ¼) of section 8, township forty-seven north of range twenty-six west, for the purpose of exploring for iron ore to be used in the furnaces of the undersigned in said county, according to the grant made to the undersigned in the lease executed to the undersigned by Charles T. Harvey on the seventeenth day of September, A. D. 1857.

Yours truly, PIONEER IRON CO.
—— —— *Agent.*

(Copy.)

To the Pioneer Iron Company, Negaunee, Michigan.

GENTLEMEN: We are in receipt of a notice dated Jan. 9, 1900, signed by the Pioneer Iron Company, by M. M. Duncan, agent, stating that the Pioneer Iron Company has entered upon the east half of the southwest quarter and the south half of the south-
60 east quarter of section 6, north half of the northeast quarter of section 7, and the northwest quarter of the northeast quarter of section 8, in township 47 north of range 26 west, for the purpose of exploring for iron ore to be used in the furnaces of your company under a certain lease executed by Charles T. Harvey on the 17th day of September, A. D. 1857.

We beg to advise you that we deny that the Pioneer Iron Company has any rights whatever in any of the lands described in your

notice or in the said lease, by virtue of the said lease, or in any other way. We have already notified you both at Cleveland and Negaunee to this effect. We forbid your exploring upon the said lands; demand that you remove from the same, if you have already entered as you state, and give you notice that if you do not do so we shall have to resort to the courts for relief from your unwarranted trespasses upon our lands.

(Signed) NEGAUNEE IRON COMPANY,
EDWARD N. BREITUNG,
MARY KAUFFMAN,
By A. B. ELDREDGE,
Their Attorney in Fact.

MARQUETTE, MICH., *Jan.* 12, 1900.

To the Negaunee Iron Co. and Mrs. N. M. Kauffman:

Please take notice that the undersigned Pioneer Iron Company has entered upon the following described lands situated in the city of Negaunee, county of Marquette and State of Michigan, to-wit:

The east half of the southwest quarter (E. ½ of S. W. ¼) and the south half of the southeast quarter (S. ½ of S. E. ¼) of section 6.

The north half of the northeast quarter (N. ½ of N. E. ¼) of section 7.

And the northeast quarter of the northwest quarter (N. W. ¼ of N. W. ¼) of section 8 in township forty-seven north of range twenty-six west, for the purpose of exploring for iron ore to be used in the furnaces of the undersigned in said county, according to the grant made to the undersigned in the lease executed to the undersigned by Charles T. Harvey on the seventeenth day of September, A. D. 1857.

61

Yours truly, PIONEER IRON COMPANY,
By —— ——, *Agent.*

(Copy.)

ISHPEMING, MICH., *January 9th*, 1900.

To the Negaunee Iron Co. and Edward N. Breitung:

Please take notice that the undersigned Pioneer Iron Co. has entered upon the following described lands, situated in the city of Negaunee, county of Marquette and State of Michigan, to-wit:

The east half of the southwest quarter and the south half of the southeast quarter (E. ½ of S. W. ¼ and S. ½ of S. E. ¼) of section 6.

The north half of the northeast quarter of section 7 (N. ½ of N. E. ¼) sec. 7.

The northwest quarter of the northwest quarter (N. W. ¼ of N. W. ¼) of section 8 in township forty-seven north of range twenty-six west, for the purpose of exploring for iron ore to be used in the furnaces of

the undersigned in said county, according to the grant made to the undersigned in the lease executed to the undersigned by Charles T. Harvey on the seventeenth day of September, A. D. 1857.

Yours truly,

PIONEER IRON CO.,
By —— ——, *Agent.*

(Copy.)

62 *Replication.*

The Circuit Court for the County of Marquette. In Chancery.

NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG, and MARY Kaufman, Complainants,
vs.
THE IRON CLIFFS COMPANY, THE CLEVELAND CLIFFS IRON COMPANY, Wm. G. Mather, and Murray M. Duncan, Defendants.

The replication of Negaunee Iron Company, Edward N. Breitung, and Mary Kaufman, complainants, to the answer of Murray M. Duncan, one of the defendants.

These repliants saving and reserving to themselves now and at all times hereafter, all and all manner of benefit and advantage of exception which may be taken to the manifold insufficiencies of the said answer for replication thereunto, say that they will, aver, maintain and prove their bill of complaint to be true, certain and sufficient in the law, to be answered unto; and that the said answer is uncertain, untrue and insufficient, to be replied unto by these repliants without this, that any other matter or thing whatever, in the said answer contained, material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

(Signed) S. W. SHAULL,
Solicitor for Complainants.

ARCH B. ELDREDGE,
CHARLES R. BROWN, AND
BENTON HANCHETT,
Of Counsel.

63 STATE OF MICHIGAN:

The Circuit Court for the County of Marquette. In Chancery.

NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG, and MARY Kaufman, Complainants,
vs.
THE IRON CLIFFS COMPANY, THE CLEVELAND-CLIFFS IRON COMPANY, Wm. G. Mather, and Murray M. Duncan, Defendants.

To George Hayden, solicitor for said defendant, Murray M. Duncan:

Take notice, that the complainants in the above entitled cause claim the right to take proofs therein, in open court the same as any case at law.

Yours, etc.,
(Signed) S. W. SHAULL,
Solicitor for Complainants.

ARCH B. ELDREDGE,
CHARLES R. BROWN, AND
BENTON HANCHETT,
Of Counsel.

Dated April 25th, A. D. 1900.
Business address, Marquette, Mich.

64 STATE OF MICHIGAN:

In the Circuit Court for the County of Marquette. In Chancery.

THE NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG, and Mary Kaufman, Complainants,
vs.
MURRAY M. DUNCAN, THE IRON CLIFFS COMPANY, and THE CLEVELAND CLIFFS IRON COMPANY, and WILLIAM G. MATHER, Defendants.

The several answers of the Iron Cliffs Company, the Cleveland Cliffs Iron Company, and William G. Mather to the complainants' said bill of complaint.

These defendants severally answering each for itself or himself, and not for the others, and praying by this answer the benefit of a demurrer to the said bill of complaint, for want of equity and want of sufficiency, for answer thereto say:

1. On information, they admit paragraphs first and second of the bill.

2. On information, believed to be true, they admit the organization of the Pioneer Iron Company, as set forth in paragraph third

of the bill, but deny that said paragraph, or Exhibit B referred to therein, fully or truthfully set forth the corporate status and capacity of said Pioneer Iron Company of record in the several offices in this State, in which such corporate records are required to be kept at the time of the filing of said bill.

3. On information which they believe to be true, the defendants admit the conveyance mentioned in paragraph fourth of the
65 bill as Exhibit C, a copy of which is annexed to said bill as Exhibit C, but they deny all the allegations of paragraph fourth of the bill in which said complainants attempted to construe said conveyance Exhibit C in any way in conflict with the terms of said conveyance, and submit that said conveyance, a copy of which is so annexed to said bill as Exhibit C, is the conveyance of an estate to said Pioneer Iron Company for the term of ninety-nine years. They deny all allegations of said paragraph fourth, seeking to limit the estate of said Pioneer Iron Company obtained under and by virtue of said conveyance.

4. These defendants were not, nor was any one of them, a party to any conveyance set forth in paragraph fifth of the bill, and have no sufficient information upon which they can either admit or deny the same, and so leave complainants to their proof, in respect to all the allegations of said paragraph fifth of the bill.

5. On information and belief, these defendants deny the allegations of said paragraph sixth of the bill.

6. On information and belief, these defendants admit the allegations of paragraph seventh of the bill, to the effect that said Pioneer Iron Company erected two stacks or furnaces in said county of Marquette, but deny any allegation or inference contained in said paragraph seventh of the bill attempting to construe said conveyance Exhibit C.

7. On information and belief, these defendants admit that the Pioneer Iron Company carried on business for many years, as set forth in paragraph eighth of the bill, but deny all the other allegations of paragraph eighth.

8. On information and belief, these defendants deny the allegations of paragraph ninth of the bill.

9. This defendant, The Iron Cliffs Co., admits a lease recorded as set forth in paragraph tenth of the bill, and refers to said
66 lease by its record as set forth in said paragraph for the provisions thereof, and denies all other allegations of paragraph tenth of the bill not herein admitted; the other defendants herein were not parties to said lease, set forth in said paragraph tenth of the bill, and have no information or interest therein or thereabout upon which to make answer, and neither admit nor deny the same, but leave complainants to their proof.

10. These defendants, on information and belief, deny the allegations of paragraph eleventh of the bill.

11. These defendants deny the allegations of paragraphs twelfth, thirteenth, fourteenth and fifteenth of the bill, as therein stated, and

on information, which they believe to be true, they say that, on the contrary, the complainants have at all times recognized the continued existence of said Pioneer Iron Company, and its continued ownership of all the property, rights, interests and estate conveyed in and by the said conveyance Exhibit C.

12. These defendants, The Iron Cliffs Company and The Cleveland Cliffs Iron Company, on information and belief, and this defendant, William G. Mather, upon his own knowledge, deny all the allegations of paragraph sixteenth of the bill, as therein stated, except the actual entry made upon certain lands described in said paragraph sixteenth of the bill, as to which these defendants, The Iron Cliffs Company and Cleveland Cliffs Iron Company, on information and belief, and the said William G. Mather, on his knowledge, say that said entry and exploring operations *was* made and have been carried on by the said Pioneer Iron Company, and by none of the others, and they deny any collusion or combination, as alleged in said paragraph sixteenth of the bill, by said Pioneer Iron Company with any of the others; and they deny any and all allegations in said paragraph sixteenth to the effect that the charter of said Pioneer Iron Company had expired; and they deny
67 all allegations in said paragraph that the said Pioneer Iron Company had not at the time of said entry and exploring operations full right under the conveyance Exhibit C, to conduct said operations; and they deny that the allegations of said paragraph sixteenth that said Pioneer Iron Company was not at the time of said entry the sole and exclusive owner of the rights and estate still in existence, granted to it by said conveyance Exhibit C; and this defendant William G. Mather, for and in behalf of said Pioneer Iron Company, admits that the said Pioneer Iron Company, through its agents and officers has ever since the commencement of said exploring operations, set forth in said paragraph sixteenth of the bill continued to carry on the same, and admits that said operations were begun and have since been carried on by said Pioneer Iron Co. at the direction of this defendant, William G. Mather, as one of the officers of said Pioneer Iron Co.; and he further says that said Pioneer Iron Company has not only entered upon said lands described in said paragraph sixteenth of the bill, but other lands covered by said conveyance Exhibit C, and proposes not only to explore for iron ore on said lands, described in paragraph sixteenth of the bill, but to explore for iron ore in any and all the other lands covered by said conveyance wherever iron ore may be found, and if found, wherever the same may be, whether in the lands described in paragraph sixteenth or upon any of the other lands covered by said conveyance Exhibit C, to mine and remove the same for use in its furnaces in Marquette county, now owned by it or hereafter acquired by it, all as it now has and claims the right to do.

13. These defendants admit the lands covered by said conveyance Exhibit C are valuable only as mineral lands, and have no improve-

ments whatever thereon, but they deny that any valuable
68 iron mine or deposit of iron ore has as yet been discovered therein, as set forth in paragraph seventeenth of the bill, and they deny that the explorations conducted by said Pioneer Iron Co. would in any way injure the complainants, but, on the contrary, are an actual benefit.

14. These defendants deny each and every all the allegations of paragraph eighteenth of the bill.

15. These defendants deny all the allegations of paragraph nineteenth of the bill.

16. These defendants deny all the allegations of paragraph twentieth of the bill, except so far as the same may contain an allegation that the existence in full force and effect of the conveyance Exhibit C to said Pioneer Iron Co. makes the title or estate of the complainants in said lands, if they have any, less valuable than if said conveyance was not in existence.

17. This defendant, William G. Mather, further answering in his own behalf, admits that more than a year ago he applied to said complainants for a lease of certain lands, which may or may not have been covered by said conveyance Exhibit C, but which were not the lands or any of the lands described in paragraph sixteenth of the bill, but title to which in part only was owned by said complainants, to which extent the allegations of paragraph sixteenth relating to an application for a lease of certain lands are true, but as to which in all other respects the allegations of said paragraph sixteenth are untrue. And he further says in respect to said application for a lease, that said Edward N. Breitung and Mary Kaufman, together with Nathan M. Kaufman, acting with them, the three of whom own all the stock of said Negaunee Iron Co., solemnly promised and agreed with this defendant, Mather, to give to him the lease upon the lands which he asked
for, as aforesaid, and repeated said promise from time to
69 time thereafter, but have never performed said promise, but, on the contrary, without denying the promise, and while continuing to admit having made the same, refuse without reason to comply therewith, but he denies that in making said application for a lease, and in the promise made by said complainants to this defendant to give the same, either this defendant or said complainants contemplated, admitted or claimed, or in any way referred to the estate, right, title and interest of the said Pioneer Iron Co., under and by virtue of the conveyance Exhibit C as originally acquired by it, as having been lost, surrendered or in any way defeated, as impliedly alleged in paragraph sixteenth of the bill, but on the contrary this defendant, William G. Mather, avers that it was understood by him and by the said Edward N. Breitung, Mary Kaufman and Nathan M. Kaufman that said lease which they had agreed to give him should be made subject to the rights of the Pioneer Iron Co. under its said conveyance Exhibit C.

18. These defendants, further answering, deny that any of the

matters set forth in paragraph twenty-first of the bill are matters to be replied to, but are only propositions of law and impertinent, and besides are unfounded and untrue, and these defendants further answering, on information which they believe to be true, say that the said complainants have admitted the continued existence of said Pioneer Iron Co. and have treated with it as such, and have admitted its continuous right and ownership as grantee under said conveyance, Exhibit C, and are estopped to deny the same.

19. And these defendants further answering say they have no personal interest in any of the matters set forth in said bill, except as they, or some of them, may be stockholders of said Pioneer Iron Co., or as an officer or agent thereof. And these defendants deny each and every allegation in said bill contained, not hereinbefore specifically admitted or denied. Wherefore they and each of them pray to be hence dismissed with their proper costs and charges in this behalf most wrongfully sustained.

THE IRON CLIFFS COMPANY,
THE CLEVELAND CLIFFS IRON COMPANY,
WILLIAM G. MATHER,
By their Solicitor, GEO. HAYDEN.

GEO. HAYDEN,
Solicitor for Defendants.

Business address: Ishpeming, Mich.

JAS. H. HOYT, *Of Counsel.*

70 *Replication.*

The Circuit Court for the County of Marquette. In Chancery.

NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG, and MARY Kaufman, Complainants,
vs.
THE IRON CLIFFS COMPANY, THE CLEVELAND-CLIFFS IRON COMPANY, Wm. G. Mather, and Murray M. Duncan, Defendants.

The replication of Negaunee Iron Company, Edward N. Breitung, and Mary Kaufman, complainants, to the answer of The Iron — Company, The Cleveland-Cliffs Iron Company, Wm. G. Mather, defendants.

These repliants saving and reserving to themselves now and at all times hereafter, all and all manner of benefit and advantage of exception which may be taken to the manifold insufficiencies of the said answer * * * for replication thereto, say that they will

aver, maintain and prove their bill of complaint to be true, certain and sufficient in the law, to be answered unto; and that the said answer is uncertain, untrue and insufficient, to be replied unto by these repliants without this, that any other matter or thing whatever, in the said answer contained, material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

(Signed) S. W. SHAULL,
Solicitor for Complainants.

ARCH B. ELDREDGE,
CHARLES R. BROWN, AND
BENTON HANCHETT,
Of Counsel.

71 STATE OF MICHIGAN:

In the Circuit Court for the County of Marquette. In Chancery.

NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG, and MARY Kaufman, Complainants,
vs.
THE IRON CLIFFS COMPANY, THE CLEVELAND CLIFFS IRON COMPANY, Wm. G. Mather, and Murray M. Duncan, Defendants.

To George Hayden, solicitor for said defendants, The Iron Cliffs Company, The Cleveland Cliffs Iron Company, and Wm. G. Mather:

Take notice, that the complainants in the above entitled cause claim the right to take proofs therein in open court the same as in a case at law.

Yours, etc.,
(Signed) S. W. SHAULL,
Solicitor for Complainants.

ARCH B. ELDREDGE,
CHARLES R. BROWN, AND
BENTON HANCHETT, *Of Counsel.*

Dated May 24th, 1900.
Business address: Marquette, Mich.

72 STATE OF MICHIGAN:

The Circuit Court for the County of Marquette. In Chancery.

NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG, and MARY Kaufman, Complainants,
vs.
IRON CLIFFS COMPANY, THE CLEVELAND CLIFFS IRON COMPANY, William G. Mather, and Murray M. Duncan, Defendants.

MARQUETTE COUNTY, *ss:*

Edward N. Breitung, one of the complainants in the above *in the above* entitled cause being duly sworn deposes and says, that issue was joined in said cause by general replication upon May 24th, 1900, as to all the defendants, except Murray M. Duncan, and as to the defendant, Murray M. Duncan, issue was joined therein upon the 24th day of April, 1900, by the filing of a general replication.

Deponent further says that notice was given on the 23rd day of August, 1900 for the hearing thereof at the term of this court appointed to be held upon the 11th day of September, instance, said cause being noticed upon the part of the defendants: This deponent further says that this case was duly noticed to take proofs in open court the same as in a case at law, upon the 24th day of May, 1900.

Deponent further says that he has fairly and fully stated the case in this cause to S. W. Shaull, complainants' solicitor herein, who resides in Marquette, Michigan, and has fully and fairly disclosed to complainants' said solicitor the facts which he expects to prove by William P. Healy, a witness for the complainants in the above entitled cause, and that the said William P. Healy is a material witness for the said complainants in the said cause, as he is advised by his said solicitor after such statement made as aforesaid and verily believes to be true and
73 that he cannot safely proceed to the trial of said cause without the testimony of him, the said William P. Healy, as this deponent is also advised by complainants' said solicitor and verily believes to be true. And this deponent further says that some time during the spring of 1900 and before the Paris exposition, so-called, now in progress at Paris, in the Republic of France, opened, which exposition, as deponent is informed and believes, opened on or about the sixteenth day of April, A. D. 1900, the said William P. Healy departed from his home in the city of Chicago, State of Illinois, and as, deponent is informed and believes, went to the Paris exposition aforesaid and has been in the said city of Paris, Republic of France ever since, and still is in the said city of Paris, Republic of France: Deponent further says that he was not aware that the said William P. Healy was about to start for said exposition until the said William P. Healy had actually started and was upon his way to attend

such exposition although deponent had heard that said William P. Healy thought of doing so: Deponent further says that with a view of obtaining the presence of the said William P. Healy at the trial of this cause, this deponent caused a letter to be written to the said William P. Healy some time before the 15th of July, 1900 and that a reply thereto was received under date of August 3rd, 1900 from the said William P. Healy stating that he, the said William P. Healy, did not intend to return until the said exposition closed and might not for a short time thereafter return to the United States. Deponent is informed and believes that said exposition will close some time on or about November 5th, 1900.

Deponent further says that he has fully and fairly stated the case in this cause to S. W. Shaull, Esq., complainants' solicitor herein, and that said complainants have a good and substantial cause of action upon the merits thereof as he is advised by complainants' solicitor after such statement as aforesaid, and verily believes
74 to be true; and this deponent further says that he expects and believes that complainants will be able to procure the attendance of the said William P. Healy as a witness at the next term of this court for his deposition, to be used as evidence in this cause on the trial thereof, and that this application for a continuance is not made for mere the purpose of delay, but that justice may be done.

And further deponent says not.

(Signed) EDWARD N. BREITUNG.

Subscribed and sworn to before me this 6th day of September, A. D. 1900.

(Signed) JAS. WALLACE,

[SEAL.] *Notary Public in and for Marquette Co.*

75 To George Hayden, Esq., solicitor for the within named defendants:

Take notice—That the within and foregoing is a true copy of an affidavit, in the within entitled cause and that a motion will be made to the circuit court for the county of Marquette, in chancery, upon the eleventh day of September, 1900, at the opening of court on said day, or as soon thereafter as counsel can be heard, for the continuance of the within entitled cause over said term of court, beginning September 11th, 1900, and that the affidavit, of which the within is a true copy, will be read in support of said motion for a continuance.

Dated Marquette, Mich., September 7th, 1900.

Yours etc.,

(Signed) S. W. SHAULL,

Solicitor for Complainants.

76 STATE OF MICHIGAN, } ss:
County of Marquette, }

Scott W. Shaull being duly sworn deposes and says that upon the seventh day of September, 1900, he did serve on George Hayden, solicitor for defendants in the within entitled cause, at the city of Marquette in said county of Marquette, a true copy of the within and foregoing affidavit and notice, by then and there depositing the same in the post-office at Marquette Michigan, postage prepaid, enclosed in an envelope, addressed to "George Hayden, Ishpeming, Mich."

Further deponent says not.

(Signed) SCOTT W. SHAULL.

Subscribed and sworn to before me this seventh day of September, 1900.

(Signed) JAS. WALLACE,
Notary Public in and for Marquette County.

77 *Subpœna.*

STATE OF MICHIGAN, *ss:*

The Circuit Court for the County of Marquette.

In the name of the People of the State of Michigan.

To William G. Mather:

You are commanded, that laying aside all and singular your business and excuses, you be and appear before the circuit court for the county of Marquette at the circuit court room, in the [SEAL.] city of Marquette in said county, on Tuesday, the fourth day of December A. D. 1900 at two o'clock in the afternoon, to testify and give evidence in a certain cause now pending in said court, then and there to be tried, between The Negaunee Iron Company, Mary Kaufman and Edward N. Breitung, complainants and The Iron Cliffs Company, The Cleveland-Cliffs Iron Company, William G. Mather and Murray M. Duncan, defendants on the part of the complainants. And for a failure so to attend you will be deemed guilty of a contempt of said court, and will be liable to pay all loss and damage sustained thereby, to the party aggrieved, together with the sum of fifty dollars in addition thereto.

Witness, the Hon. J. W. Stone, judge of said circuit, at the circuit court room, in the city of Marquette, in said county, on the 31st day of October, one thousand nine hundred.

WM. A. ROSS, *Clerk.*

(Signed) A. A. ELLISON,
Deputy Clerk.

S. W. SHAULL,
Solicitor for Complainants.

78 STATE OF MICHIGAN, } ss:
County of Marquette, }

I hereby certify and return, that on the first day — Nov. A. D. 1900, at Ishpeming, I served the within subpœna personally, on William G. Mather, witness named in said subpœna, by then and there, at the place and on the date above mentioned, showing to said above named witness the said subpœna, with the seal impressed thereon, and delivering to said witness a true copy of the said subpœna, and paying to said witness two fifty for witness fees for traveling to Marquette the court room named in said subpœna, and for one day's attendance thereat, the following sum of money, — to-wit — dollars.

JOHN FARM,
Deputy Sheriff of said County.

My fees, $2.60.

(Endorsed:) Filed, November 2, 1900. Wm. A. Ross, clerk.

79 *Order Amending Bill and Answers.*

STATE OF MICHIGAN:

In the Circuit Court for the County of Marquette. In Chancery.

THE NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG, and Mary Kaufman, Complainants,
vs.
MURRAY M. DUNCAN, THE IRON CLIFFS COMPANY, THE Cleveland Cliffs Iron Company, and William G. Mather, Defendants.

At a session of said court held at the court house in the city of Marquette, in said county, on the 22d day of June, A. D. 1901.

Present: The Honorable John W. Stone, circuit judge.

80 This cause having been brought on to hearing upon pleadings and proofs, and before the same was finally submitted to the court, on motion of counsel for the complainants,

Ordered, that the bill of complaint as heretofore amended be further amended as follows:

1. By adding to paragraph numbered *third* of said bill the words: "That on the 22nd day of April, A. D. 1857, said Harvey conveyed by warranty deed to the Pioneer Iron Company 3,488.21 acres of the 4,162.40 acres of the lands conveyed to him by said Reynolds on the 26th day of February, A. D. 1857."

2nd. That paragraph numbered *eighteenth* be amended so as to read as follows:

"Eighteenth (as amended). Your orators show that the officers and agents of said Iron Cliffs Company and said Cleveland Cliffs

Iron Company, who are engaged in carrying out the said scheme and plan to defraud your orators and to mine and remove the iron ore from said lands under the cover and by the use of the name of the Pioneer Iron Company, are, so far as they are known to your orators, William G. Mather, who is the president of the said Iron Cliffs Company and also president of said Cleveland Cliffs Iron Company, and Murray M. Duncan, who your orators are informed and believe, and upon information and belief charge the truth to be, is the managing agent of the said Iron Cliffs Company and of the said Cleveland Cliffs Iron Company in charge of said work upon said lands. And your orators aver the rights and privileges, if any were granted in said lease, have long since been terminated and extinguished. But the said defendants claim and pretend that under the provisions of act 142 of the Public Acts of 1889 of the legislature of the State of Michigan, and under the provisions of act No. 60 of the Public Acts of 1899 of
81 the legislature of the said State, said Pioneer Iron Company has been reorganized, and that by reason of said acts said reorganized company has thereby been revived, and that the right to mine ore free of royalty under said lease from said lands has thereby become revived and vested in said Pioneer Iron Company. And your orators aver and claim that if said statutes of 1889 and 1899 shall be held to apply to and to authorize the reorganization of the Pioneer Iron Company and shall be held to reinvest said Pioneer Iron Company with said lease and the right to mine ore from said lands under said lease, your orators would thereby be deprived of their property without the process of law in violation of the provisions of the fourteenth amendment of the Constitution of the United States, which forbids any State to deprive any person of life, liberty or property without due process of law, and your orators claim that said statutes so applied are void under said provisions of said amendment."

3rd. That the second subdivision of paragraph numbered *twenty-first* be amended by adding thereto the words:

"For the reason that said Harvey's said right was extinguished by his said deed to said Pioneer Iron Company of date April 22d, 1857, and that if not thereby extinguished said lease was void in that it does not operate to assign the whole of said Harvey's said special mining right or privilege."

4th. That the third subdivision of said paragraph numbered *twenty-first* be amended so as to read as follows:

"(3.) That by reason of the failure of said Pioneer Iron Company to occupy any portion of the lands described in said lease so executed by the said Charles T. Harvey to the said Pioneer Iron Company, as aforesaid, in the exercise of its franchises, from and
82 ever since the 10th day of March, A. D. 1856, as hereinbefore set forth, said lease if not already extinguished and the rights thereby acquired by the said Pioneer Iron Company became and were terminated, and that whatever rights were therein granted to

said Pioneer Iron Company and its successors became and were extinguished."

5th. That subdivision 4 of said paragraph numbered *twenty-first* be amended so as to read as follows:

"(4.) That by reason of the abandonment of said lease of date September 17th, 1866, by said Pioneer Iron Company as aforesaid, the same if not already terminated, became and was thereby extinguished."

6th. That the 5th subdivision of paragraph numbered *twenty-first* be amended so as to read as follows:

"(5.) That by reason of the expiration of the corporate existence of said Pioneer Iron Company on the 2nd day of April, A. D. 1887, whatever rights and privileges had been acquired by said Pioneer Iron Company, if not already extinguished, thereby became terminated."

Also on motion of defendants that the several answers of the defendants in this cause be amended as follows:

1. That in each answer after the paragraph therein numbered 12 and as a part of such paragraph be added the following:

"But these defendants allege that the copy of said ninety-nine year lease, to-wit, Exhibit 'C' attached to said bill, is erroneous and not a true copy of said lease in this, to-wit, that said lease contains the words 'furnaces or forges' instead of the words 'furnace or forges,' as contained in said Exhibit 'C.'"

2. That there be added after paragraph numbered 16 in each of said answers the following:

"These defendants admit that in April, 1901, said Pioneer Iron Company has caused to be filed in the office of the secretary
83 of state of Michigan and the county clerk of Marquette county, certain amended and perfected articles of association of said company in renewal of organization or reorganization of said company, and that said Pioneer Iron Company claims to be, under said filings as well as previous filings, a valid corporation, and to have been properly reorganized under the laws of this State under the acts as set forth in the amended bill of complaint or otherwise, and that these defendants are informed and believe that the said Pioneer Iron Company is perfectly organized as a corporation under the law of the State of Michigan and is now existing as such and is in all respects a valid and existing corporation under said laws, and they deny each and every other allegation of the said bill of complaint in the eighteenth paragraph of said bill of complaint as amended."

3. That there be also added to said paragraphs so amended in said answer and after the preceding amendment the following to stand as a separate paragraph:

"That these defendants deny each and all of the allegations contained in paragraph twenty-one of said bill of complaint as amended."

4. Also that the answer of said defendants, William G. Mather,

The Iron Cliffs Company and The Cleveland Cliffs Iron Company, be amended by adding the following paragraph thereto to stand as paragraph 17½, to-wit:

"And this defendant, William G. Mather, answering for himself, says he owns in his own right and as trustee 3940 shares of stock of said company, and that if any decree be rendered in this case by the court in any way declaring a forfeiture or termination or expiration of said ninety-nine year lease or in any way affecting the rights of the Pioneer Iron Company thereunder, that said Pioneer Iron Company not being made a party to this proceeding, he as such stockholder and said Pioneer Iron Company would thereby be deprived of his and its property without due process of law in violation of the provisions of the fourteenth amendment of the Constitution of the United States, which forbids any State to deprive any person of life or liberty or property without due process of law, and this defendant avers that any decision or findings of the court in any way limiting, terminating, changing, modifying, annulling or diminishing the value of any of the rights of the Pioneer Iron Company under said ninety-nine year lease and as expressed therein would be void and of no effect under said provision of said amendment to the Constitution of the United States."

And it is further ordered that this order shall stand as such amendments.

J. W. STONE,
Circuit Judge.

84 *Case as Settled by the Circuit Judge.*

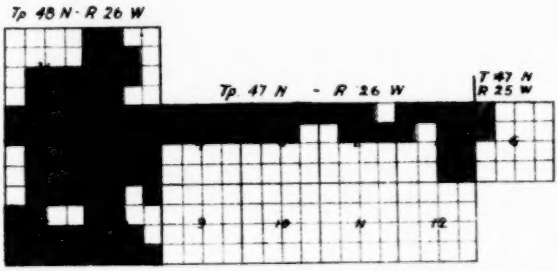
STATE OF MICHIGAN:

In the Circuit Court for the County of Marquette. In Chancery.

NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG, and MARY KAUFMAN, Complainants,
vs.
MURRAY M. DUNCAN, IRON CLIFFS COMPANY, CLEVELAND CLIFFS IRON COMPANY, and WILLIAM G. MATHER, Defendants.

At a session of said court continued and held at the court house in the city of Marquette on the 19th day of March, 1901, and
85 until the 23d day of March, 1901, this case came on to be heard upon proofs taken in open court, the same as in a suit at law.

At the opening of the trial, before offering in evidence any of the deeds or other written instruments, counsel for complainants produced and delivered to the court and to counsel for the defendants, for the purpose of showing the location of the lands described in the deeds, contracts and mortgages about to be offered in evidence, certain land plats and references thereto, as follows:



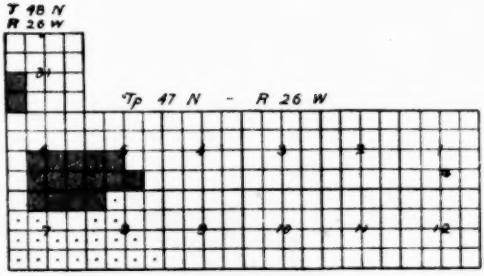
Lands embraced in deed from Reynolds to Harvey, Feb. 26, 1857.

Plat No. 1.

Lands embraced in deed from Harvey to Pioneer Iron Co., April 22, 1857.

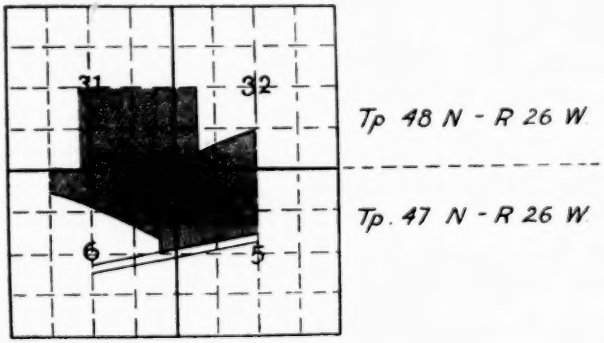
Plat No. 2.

86



Lands specifically described in the "99 year lease."
Lands embraced in the "99 year lease" by the words "and all other lands now owned by the party of the first part in either of the townships above mentioned."

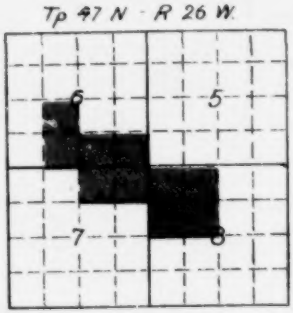
Plat No. 3.



Lands conveyed by the Pioneer I. Co. to Jas. L. Reynolds, Sept. 10, 1862, by warranty deed—conveyed by Harvey to Pioneer I. Co., April 22, 1857.

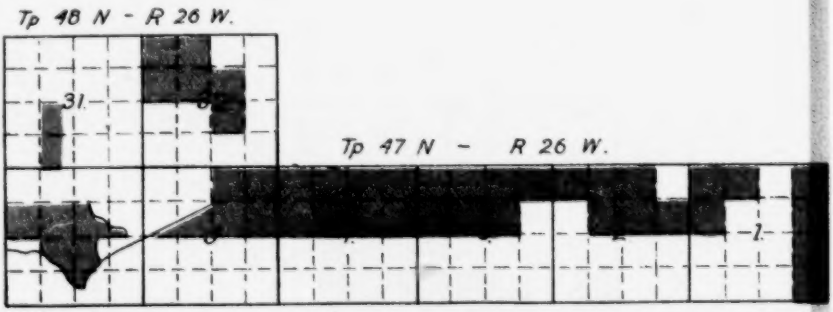
Plat No. 4.

87



Lands embraced in notice of entry by Pioneer I. Co., Jan. 9 & 15, 1900, under "99 year lease," to explore for ore.

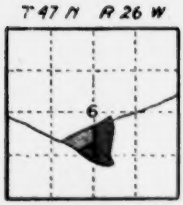
Plat No. 5.



Lands embraced in partition suit, Arctic Iron Co. vs. Pioneer I. Co.

Plat No. 6.

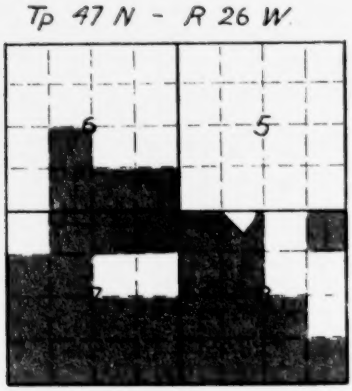
88



Arctic Iron Co. to Pioneer Iron Co. conveyed its mineral interest Sept. 14, 1889, 19 48-100 acres.

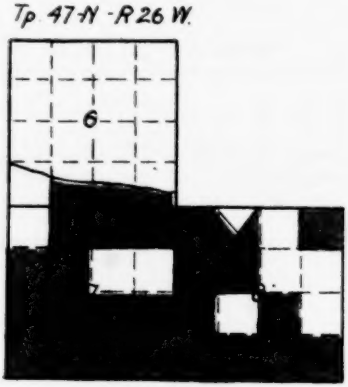
Pioneer I. Co. to Arctic I. Co. conveyance of all its mineral interests Sept. 14, 1889, in 24 25-100 acres.

Plat No. 7.

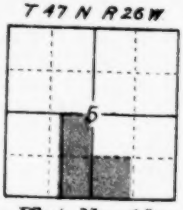


Plat No. 8.

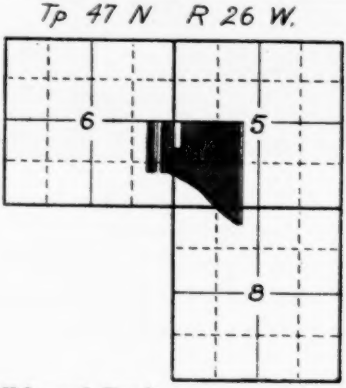
89



Plat No. 9.



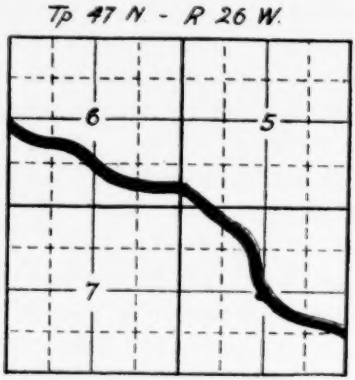
Plat No. 10.



Harvey to Edward Breitung, warranty deed, April 26, 1866 Rec. July 14, 1866, Liber H., p. 117.

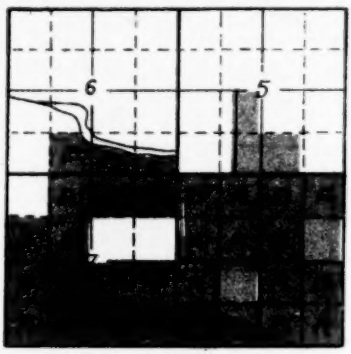
Plat No. 11.

90



Plat No. 12.

Sections 5, 6, 7 and 8. Tp. 47 N. R. 26 W.



Plat No. 13.

The Harvey Interest.

Lands embraced in Harvey's $60,000 mortgage to Edward Breitung, Aug. 18, 1873. Rec. Aug. 22, 1873. Liber 4, p. 207. Foreclosure in chancery, sale made Nov. 13, 1876.

A Commissioner's deed on foreclosure sale to John B. Maas, Nov. 13, 1876. Rec. Nov. 29, 1876. Liber Q, 367.

91 [B] Commissioner's deed to Nicholas Lonstorf, Nov. 13. Rec. Nov. 29, 1876. Liber Q, 369.

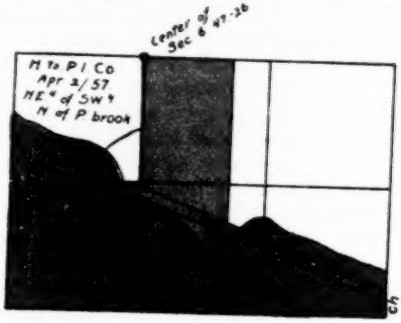
Lonstorf and Maas quit-claim the lands marked red, to Negaunee Iron Co., March 8, 1879. Rec. March 12, 1879 —S. 155.

Harvey quit-claim to Negaunee Iron Co. the lands marked red, Jan. 10, 1882. Rec. Jan. 31, 1882. Liber X, 105.

[redacted] Charles T. Harvey, by sheriff to Charles P. Kellogg, Sept. 4, 1877, upon an execution levy, Oct. 28, 1875. Rec. Oct. 28, 1875. Liber 1 of Levies, 64.

Charles P. Kellogg, power of attorney to Palmer V. Kellogg, Sept. 27, 1879. Rec. "2" of Mis. Rec., 633.

Charles P. Kellogg by attorney, conveys lands marked blue to Edward Breitung, Dec. 4, 1879. Rec. Dec. 13, 1879. Liber "S," 514.



Plat No. 14.

Counsel for complainants opened the proceedings.

JUDGE BROWN: The bill of complaint avers, and the answer admits:

1. Reynolds' ownership of the lands described in the bill of complaint. These lands are indicated on Plat No. 1, which your honor has.

92 2. The execution of the deed and accompanying agreements between Reynolds and Harvey, dated Feb. 26, 1857, is admitted by the answer of all the defendants.

3. The organization of the Pioneer Iron Company, April 2, 1857, is admitted.

4. The execution and delivery by Harvey to the Pioneer Iron Co. of the instrument known as the 99-year lease, is admitted.

Mr. HOYT: This may go in, and we will compare it afterwards. We do not know whether it is the same as in the bill of complaint or not.

Judge BROWN: For the purpose of showing the consideration in the deed from Reynolds to Harvey, we offer that deed, recorded in Liber B, page 381. The consideration named is $30,000. The execution of that deed is admitted in the answer, so there is no occasion to offer it for any other purpose than to show the consideration.

We next offer in evidence a deed from Harvey to the Pioneer Iron Co., dated April 22, 1857; recorded July 3, 1857, in Liber B, 385. The lands are described in plat No. 2.

A copy of this deed appears as Exhibit No. 1 extra and is as follows:

Charles T. Harvey to the Pioneer Iron Company.

This indenture, made this twenty-second day of April, in the year of our Lord one thousand eight hundred and fifty-seven, between Charles T. Harvey of Marquette county, State of Michigan of the first part and the Pioneer Iron Company, a corporation existing in said county and State of the second part; witnesseth, that the said party of the first part, for and in consideration of the sum of twenty-five thousand dollars to him in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and
93 acknowledged has granted, bargained, sold, remised, released, aliened and confirmed and by these presents does grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part their heirs and assigns forever, in corporate succession the lots or parcels of land described as follows, to-wit: The west half and the southwest quarter of the northeast quarter, and the northwest quarter of the southeast quarter of sec. No. (32) (400 acres) thirty-two —.

Also the southeast quarter and the east half of the southwest quarter of section No. thirty-one (31) (240 acres), being in township No. forty-eight (48) north range No. twenty-six (26) west containing 540 acres in the same. Also the east half and north half of northwest quarter and southwest quarter of the northwest quarter (424 68-100 acres) of section one (1); also south half of northeast quarter, northwest quarter of northeast quarter, east half of northwest quarter and northwest quarter of northwest quarter and the southwest quarter (387.64 acres) of section No. two (2), also the south half and the north half of the north half and the south half of the northwest quarter and

the southwest quarter of the northeast quarter (587 94-100 acres) of section No. three (3), also all of section No. four (4) (632 36-100) acres, also the north half, and the north half of the southeast quarter and the southeast quarter of the southeast quarter (430 36-100 acres) of section No. five (5), also the north half (300 98-100) acres of section No. six (6), also the following parcel of land in said section six (6) described by beginning at the northeast corner of the west half of the southwest quarter of said section (being the tract of land formerly owned by James Yandes and William A. Pratt) and running from said point due east one-fourth of a mile to the centre of the section—thence due south to the centre of the stream known as Partridge brook, thence following the centre of the channel of said brook to the boundary line
94 of the west half of the southwest quarter of said section, thence north to the place of beginning. Said tract containing about twenty acres more or less; being a portion of the north half of the northeast quarter of the southwest quarter of said section six (6) all in township No. forty-seven (47) north of range No. twenty-six (26) west, containing 2,583 96-100 acres in the same. Also the west half of northwest quarter (64 24-100 acres) of section No. six (6) township No. forty-seven (47) north of range No. twenty-five (25) west of meridian of Michigan, containing according to U. S. survey 3,488 20-100 acres, all being in the county of Marquette and State of Michigan. All of which is sold subject to the reservation of minerals and conditions of using and developing and sale of the same on "sail" lands as specified in the deed of the premises by James L. Reynolds and wife to the party of the first part, but all the interest thereby acquired by the party of the first part to the one undivided half of the minerals exported and the privileges of manufacturing free of cost ores which may be mined on the said lands is hereby assigned as fully as can be done by the party of the first part to the purty of the second part hereto.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim or demand whatsoever of the said party of the first part, either in law or equity of in and to the above released premises with the said hereditaments and appurtenances to have and to hold the said premises as above described with the appurtenances unto the said parties of the second part, and to its heirs and assigns forever. And
95 the said party of the first part for himself, his heirs, executors and administrators does covenant and agree to and with the said party of the second part its heirs and assigns that at the time of the ensealing and delivery of these presents he was well seized of the premises above described as of a good, sure, perfect absolute and indefeasible estate of inheritance in law in fee simple and that the said lands and premises are free from all encumbrances whatever and that the above bargained premises in the quiet and peaceful possession of the said party of the second part, its heirs and assigns,

against all and every person or persons lawfully claiming or to claim the whole or any part thereof, he will forever warrant and defend.

In witness whereof, the said party of the first part, has hereunto set his hand and seal the day and year first above written.

CHARLES T. HARVEY. [L. S.]

Sealed and delivered in presence of
L. T. MERRILL.
W. F. MERRILL.

Duly acknowledged in the city and county of New York on the 22d day of April, A. D. 1857, before John Livingston, commissioner for the State of Michigan.

2. A warranty deed from Harvey to the Pioneer Iron Company, dated August 5, 1858; recorded August 5, 1858, in Liber B, 704. Lands described in plat No. 14, marked blue. A copy of this deed appears as Exhibit No. 2 extra, and is as follows:

This indenture, made this fifth (5th) day of August, in the year of our Lord one thousand eight hundred and fifty-eight, between Charles T. Harvey and Sarah V. E., his wife, of Marquette county, State of Michigan, of the first part, and the Pioneer Iron Company, a corporation existing according to law in Marquette county, State of Michigan, of the second part,

96 Witnesseth, that the said parties of the first part, for and in consideration of the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, do by these presents, grant, bargain, sell, remise, release, alien and confirm, unto the said party of the second part, and to its successors or assigns forever, all that certain piece or parcel of land situated in the township of Teal Lake, county of Marquette and State of Michigan, known and described as follows, to-wit:

Commencing at the centre of section No. six (6) in township No. forty-seven (47) north of range No. twenty-six (26) west, and running thence east twelve hundred (1,200) feet, thence south to the centre of the present channel of Partridge brook (so called), thence westerly in the centre of the channel of said brook to a point directly south of centre of the section, thence north to the first named point, viz.: the centre of said section six. Said land hereby conveyed being bounded on the west and north by land now owned by the party of the second part, and containing forty (40) acres more or less.

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining to have and to hold the said premises as described, with the appurtenances, unto the said party of the second part, and to its successors and assigns forever. And the said parties of the first part, their heirs, executors, administrators and assigns do covenant, grant, bargain, and agree

to and with the said party of the second part, its successors and assigns, that the premises thus conveyed in the quiet and peaceable possession of the said party of the second part, its successors and assigns, they will forever warrant and defend against any person whomsoever, lawfully claiming the same, or any part thereof.

97 In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

CHARLES T. HARVEY. [SEAL.]

Sealed and delivered in presence of

ANNA D. HUNGERFORD.
J. J. ST. CLAIR.

SARAH V. E. HARVEY. [SEAL.]

ANNA D. HUNGERFORD.
J. J. ST. CLAIR.

Duly acknowledged in Marquette county, Mich., on the 5th day of August, 1858.

Complainant's counsel, for the purpose of further proving title to the lands described in the bill of complaint also offered the records from the register of deeds of Marquette county, the following deeds and conveyances thereof, all of which were duly executed, witnessed and acknowledged.

3. A warranty deed from Harvey—Charles T. Harvey, to Edward Breitung, dated April 26, 1866; recorded in Liber H, page 117, on July 14, 1866. The lands are marked red on plat No. 11. This deed contains this language:

"It is agreed that this instrument is to be suspended by another as soon as a new survey can be made, to more accurately determine the situation of the above described premises in connection with the United States sectional survey; which subsequent deed shall be legally recorded as sole permanent evidence of the premises herein proposed to be sold and conveyed."

4. Edward Breitung, warranty deed to R. D. La Coe and David Morgan. Among other lands an undivided one-fourth interest in lands described in deed numbered 3 as above, dated July 12, 1866, rec. July 14, 1866, Liber H, 119.

5. Ralph D. La Coe and wife and David Morgan, warranty deed to Benjamin Beyea, an undivided one-fourth of their interest in lands described in deed numbered 4, as above, dated Septem-

98 ber 25, 1868. Rec. August 11, 1871, in Liber L, 136.

Mr. HOYT: We will reserve the right to object to all this testimony.

COURT: Yes, you may move to strike it out, I suppose, if you find it was improperly admitted.

Judge BROWN:

6. Ralph B. La Coe to William D. Reese, deed, warranty against grantor's own acts, 3-32 interest in the lands described in No. 4, dated October 23, 1880, recorded November 3rd, 1880, in Liber U 465.

7. Benjamin Beyea and wife to William D. Reese, warranty deed 2-32 interest as acquired in No. 4. All these are undivided interests, dated November 21, 1881. Rec. March 24, 1882, Liber X 306.

8. David Morgan to William D. Reese, warranty deed, 3-32 interest in lands described in No. 4, dated November 21, 1881. Rec. March 24, 1882 in Liber X 312.

9. William D. Reese and wife to Mary Kaufman, warranty deed, one-fourth interest in the lands described in number 3, dated January 28, 1899. Rec. February 10, 1899, Liber 32, 552.

10. Edward Brietung to J. B. Maas, warranty deed, ¾ interest in the lands described in No. 3, dated April 26, 1875. Rec. in Liber P, p. 94, May 4, 1875.

11. John B. Maas and wife, warranty deed to Mary Breitung, same interest as No. 10, dated August 2, 1878, recorded August 7, 1879, Liber S, 302.

12. Mary Breitung, warranty deed to Edward Breitung, same as No. 11, dated February 25, 1881. Rec. February 26, 1881, Liber V, 103.

13. Harvey mortgage, for $60,000, to Edward Breitung, dated August 18, 1873; recorded August 22, 1873, Liber 4 of Mort-
99 gages, page 207. Lands marked red on plat No. 13. This mortgage in terms covered the entire and not an undivided interest.

14. This one we will pass for the present.

15. Commissioner's deed, Harvey to John B. Maas, dated Nov. 13, 1876; recorded Nov. 29, 1876, Liber Q, 367. The lands are marked A, on plat No. 13.

16. Commissioner's deed, Harvey to Nicholas Lonstorf, dated Nov. 13, 1876; recorded Nov. 29, 1876; Liber Q, page 369. Lands are marked B on plat No. 13.

The foregoing commissioner's deeds were made upon sales under decree of the circuit court of Marquette county in chancery, upon a regular foreclosure of the $60,000 mortgage of Harvey to Breitung.

17. Charles T. Harvey, by sheriff deed, dated Dec. 27, 1878, recorded Dec. 27, 1878, Liber S, 40, to Nicholas Lonstorf. Beginning at the southwest corner of the northeast ¼ of the southwest ¼, section 6, township 47, north of range 26 west; thence north on subdivision line 9 chains to Partridge brook; thence southeasterly along Partridge brook to the south boundary line of said subdivision; thence west on said line 16 chains 50 links, to the place of beginning; containing 7.42 acres. The levy was made Dec. 27, 1876; filed Jan. 8, 1877; sale April 16, 1877. See plat No. 14.

18. Deed same parties, and same sale and same dates as No. 17;

the southeast fractional ¼ of the southwest ¼ of sec. 6, 47-26, recorded Dec. 27, 1878, Liber S, 42. Shown on plat No. 14. This would convey Harvey's title to that portion only of the southeast ¼ of the southwest ¼ of section 6, marked green on plat No. 14; the remaining portion having been conveyed before on mortgage foreclosure.

19. Deed same parties, same sale and same date as No. 17. Beginning at the south quarter stake of section 6, 47-26; thence
100 north on center line of said section 6, 15 chains to the center of Partridge brook; thence easterly along the center of Partridge brook to the east boundary line of the southwest ¼ of the southeast ¼ of section 6; thence south on said boundary line 14.5 chains to the south boundary line of said section 6; thence west on said section line 20 chains to the place of beginning. Recorded Dec. 27, 1878, Liber S, 44. This conveys the parcels marked green in plat No. 14.

20. Deed same parties, same sale and same date as No. 17. Beginning at the southeast corner of section No. 6, in township 47, north of range 26 west; thence running north on the section line 10 chains to the channel of Partridge brook; thence northwesterly along said Partridge brook to the west boundary line of the southeast ¼ of the southeast ¼ of section 6, 42–26; thence running south on subdivision line 14.50 chains to the south boundary of said section; thence easterly along said section line 20 chains to the place of beginning, and containing 24.40 acres. Recorded, Dec. 27, 1878, Liber S, 46. Conveys only that portion marked green on plat No. 14; the other portions of the description having been previously conveyed.

The conveyances described in paragraphs 17, 18, 19 and 20, were made upon valid execution sales against Charles T. Harvey for an insufficiency upon his mortgage debt to Breitung, remaining after the foreclosure sale of mortgaged premises.

21. Nicholas Lonstorf and wife and John B. Maas and wife, quit claim deed to the Negaunee Iron Company of the lands in sections 7 and 8, marked A and B, on plat No. 13, and all that part of the southwest ¼ of the southeast ¼, and all that part of the southeast ¼ of the southeast ¼ of section 6, south of Partridge brook, as indicated on plat numbered 14, dated March 8, 1879, recorded March 12, 1879, in Liber S, 155.

101 Harvey's interest in that portion of the southeast ¼ of the southwest ¼ of section 6, marked red on plat No. 14, passed to the Negaunee Iron Company upon the foreclosure of the Harvey mortgage.

22 Nicholas Lonstorf, quit-claim deed to the Negaunee Iron Co., dated June 14, 1879; recorded July 8, 1879, Liber S, 262; the same description as in No. 17.

23. Charles T. Harvey, by sheriff, upon execution levy made Nov. 4, 1875, to Wm. P. Healy, that part of the southeast ¼ of the southwest ¼ and of the south ½ of the southeast ¼ of section 6, lying 200 feet south of the track of the Peninsula division of the Chicago & North-western Railway Co. as the same lay in 1871; also the north ½

of the northeast ¼ of section 7, 47–26; also northeast ¼ of the northwest ¼ and south ½ of the northwest ¼, and all of the south ½ of section 7; also all of section 8, 47–26, except the southeast ¼ of the northeast ¼, and the northeast ¼ of the southeast ¼ in said last mentioned section. Deed dated May 2, 1881; recorded May 4, 1881, Liber V, page 314. To which I have added this note. "Healy's levy was made in 1875, but it covered only such lands as are marked red on plat No. 13, being the same lands embraced in the Harvey mortgage.

24. Wm. P. Healy to the Negaunee Iron Co., a quit-claim deed of the lands described in No. 23, next above; lands marked red on plat No. 13. Dated July 2, 1882; recorded July 9, 1882, Liber 24, 458.

25. Chas. T. Harvey and wife to the Negaunee Iron Co., quit-claim deed, dated Jan. 10, 1882; that part of the southeast ¼ of the southwest ¼ and the south ½ of the southeast ¼ of section 6, which lies more than 200 feet south of the tracks of the Peninsula division of the Chicago & North-western railway, as said tracks existed 102 in 1873; all of section 7, except the northwest ¼ of the northwest ¼ and the south ½ of the northeast ¼ of said section. All of section 8, except the northeast ¼ of the southwest ¼ and the southeast ¼ of the northeast ¼, all in town 47 north of range 26 west; recorded Jan. 13, 1882, Liber X, 105.

27. Charles T. Harvey, by sheriff's deed, to Charles P. Kellogg, date of sale February 17, 1876; date of deed September 4, 1877. Rec. September 5, 1877 in Liber R, 103. The southwest quarter of the southeast quarter of section 5; sixty rods off the east side of the southwest quarter of section 5; the southeast quarter of the northeast quarter and the northeast quarter of the southwest quarter of section 8–47–26, lands marked blue on plat 13.

This deed was made upon an execution sale upon a judgment in the circuit court for the county of Marquette against Charles T. Harvey.

27½. Charles P. Kellogg, power of attorney, to Palmer V. Kellogg to sell any lands belonging to the grantor in Marquette county. Dated Sept. 27, 1879. Rec. in Liber 2 of Mis. Rec. page 633, Dec. 22, 1879.

28. Charles P. Kellogg by attorney to Edward Breitung, special warranty deed, lands dated Dec. 4, 1879; recorded Dec. 13, 1879, Liber S, 514.

Conveys the following described lands: The southwest quarter of the southeast quarter and sixty rods of the east side of the southwest quarter of section 5; southeast quarter of the northeast quarter and northeast quarter of southwest quarter of section 8, all in township 47, north of range 26 west.

And the south half of the southeast quarter of section 26, in township 47 north of range 27 west.

Containing 260 acres, more or less.

31. Charles P. Kellogg by attorney, deeds to Edward Breitung

same as in No. 29 above. Dated December 4, 1879; re-
103 corded Dec. 13, 1879, Liber S, 514. Breitung conveyed the Reynolds interest in section 5, and north ½ of the southeast ¼ and northeast ¼ of the southwest ¼ of section 6, to the Arctic Iron Co.

32. Deed from Reynolds to Harvey and the papers annexed thereto, found in Liber B, page 361.

We now offer in evidence letters of administration of James L. Reynolds' estate, recorded in Liber X, 243:

"In the Matter of the Estate of JAMES L. REYNOLDS.

STATE OF MICHIGAN, } ss:
County of Kent, }

Probate Court for said County.

In the Matter of the Estate of JAMES L. REYNOLDS, Deceased.

By Benjamin A. Harlan, judge of probate for said county.

To Mary C. Reynolds, Thomas B. Bryan, William C. Reynolds, and James A. Parsons, Greeting:

Whereas, James L. Reynolds lately departed this life, testate being at, or immediately previous to his death, an inhabitant of the county of Kent, and having while he lived and at the time of his decease, estate within the said county of Kent to be administered; and

Whereas, at a session of said probate court, holden at the city of Grand Rapids, in said county, on the 7th day of April, in the year of our Lord one thousand eight hundred and seventy-three, the last will and testament of said deceased, a copy whereof is hereto annexed, was duly proved, approved and allowed, and wherein you are appointed executors thereof, whereby the power of committing administration and full disposition of all and singular the goods, chattels, rights, credits and estate whereof the said deceased died possessed in the State of Michigan, and also hearing, examining and allowing the accounts of such administration as doth appertain unto me; and you having given a bond in the premises, which has been duly approved and filed, as required by law in that behalf;

104 Now therefore, trusting in your care and fidelity, I do by these presents commit unto you, the said Mary G. Reynolds, Thomas B. Bryan, William C. Reynolds and James A. Parsons, full power and authority to administer and faithfully dispose of according to law and the will of the said testator, all and singular the goods, chattels, rights, credits and estate of said deceased within the State of Michigan, which shall at any time come to your possession or to the possession of any other person for you, to ask, gather, levy,

recover and receive all the goods, chattels, rights, credits and estate whatsoever of said deceased, which to him while he lived and at the time of his death did belong; and to pay and discharge all debts, legacies and charges charg-able on the same, and such dividends thereon as shall be ordered and decreed by said court; hereby requiring you to make return to said court within three months a true and perfect inventory of all the goods, chattels, rights, credits and real estate of said deceased which shall come to your possession or knowledge, or to the possession of any other person for you, and also to render a just and true acc-unt of your administration to said court within one year, and at any other time when required by said court; and to perform all orders and decrees of said court by you to be performed in the premises.

In testimony whereof I have hereunto set my hand and the seal of said probate court at the city of Grand Rapids, the 12th day of April, in the year of our Lord one thousand eight hundred and seventy-three.

BENJAMIN A. HARLAN,
Judge of Probate."

[PROBATE SEAL.]

Judge BROWN: This will authorizes the wife and James B. Bryan, and his son, William C. Reynolds, and James A. Parsons, or any of them, to lease, divide, sell and convey, at their discretion, any real estate of which he is seized, or any interest therein to which he may be entitled at his decease. It is properly certified as required by statute, and recorded in this county.

105 It is hereby stipulated that said will and codicil thereto attached, names all the children of James L. Reynolds, and shows that the only children and heirs-at-law of James L. Reynolds (aside from Mary C. Reynolds, his widow) were William C. Reynolds, James D. Reynolds, Edward Reynolds and Henry G. Reynolds. And that said will contained the following provision, viz:

"Twentieth. All the rest and residue of my estate I give to my children above named, share and share alike, the descendants of any deceased child taking their parent's share among them, and to their heirs forever."

Also the following provision, viz:

"I devise specifically to my sons, share and share alike, the children of any deceased son taking their parent's share—all my minerals and mining interest in the county of Marquette and State of Michigan, with the appurtenances, to them and to their heirs forever; and said proper-y shall not require to be converted into personalty for distribution. I desire that said mining interest shall not be sold within ten years after my decease, believing that the income from said property for rent or royalty upon ores mined, will be more beneficial than an absolute sale. If, however, all the beneficiaries, and all the executors and executrix then living and qualified should concur, my executors may sell, divide and convey said mining interest, and control the same as fully as I can myself do, provided,

they are also satisfied of the propriety of such sale, etc., and pending the settlement of my estate my executors and executrix, or any two of them, shall have full authority to manage and lease said mining interest, and to receive and receipt for the rents thereof on behalf of the legatees."

Thirty-four. Executors and heirs-at-law of James L. Reynolds, deceased, to Edward Breitung, a quit claim deed of the mineral interest and reservations in the deed and agreement between Reynolds and Harvey, dated February 26, 1857. Date of quit claim, February 1, 1882, recorded May 1, 1883, Liber 6, page 360, as follows:

106 *Quit Claim Deed.*

William C. Reynolds *et al.*
to
Edward Breitung.

For fifty-five thousand dollars ($55,000) to them in hand paid William C. Reynolds, Thomas B. Bryan and James A. Parsons, executors and Mary G. Reynolds, executrix of the estate of James L. Reynolds, deceased, and William C. Reynolds, James D. Reynolds and Edward V. Reynolds (all unmarried) and Henry G. Reynolds, the four sons, heirs and devisees of said James L. Reynolds and Fannie L., wife of said Henry G. Reynolds, hereby grant, convey and quit claim to Edward Breitung, of Marquette county, Michigan, all that mineral interest which was reserved by James L. Reynolds in his deed to Charles T. Harvey, dated February 26, 1857, and recorded in Marquette county, July 3, 1857, in Book "B," pages 381–382, and which interest was further defined by a declaratory instrument between said Charles T. Harvey and James L. Reynolds, dated February 1, 1871, and recorded in said county in Book "I" Miscellaneous Records, page 304, to which deed and declaration reference is hereby made.

Said conveyance was duly executed, signed, witnessed and acknowledged in the usual form, and was recorded May 1, 1883, in Liber 6 of Deeds, at page 360.

To save putting on a witness to prove the death of Edward Breitung, will you admit, Mr. Hayden, that Edward Breitung died March 3, 1887, intestate?

Mr. HAYDEN: We will admit that Edward Breitung died March 3, 1887. Of course I do not admit that he died intestate.

107 Judge BROWN: Will you admit that Edward N. Breitung was his sole heir at law, his only child, and his widow?

Mr. HAYDEN: Yes, we will admit he left a son and widow. I will admit that Edward N. Breitung and his widow, Mary Breitung, were the only members of the family left living.

35 and 36 omitted.

Judge BROWN:

37. We offer Liber 3, Miscellaneous Records, page 637, dated January 31, 1882, Edward Breitung to Arthur B. Meeker and others, contract for the sale of an undivided ¾ of the Reynolds mineral interest in that part of the S. E. ¼ of the S. W. ¼ and the S. ½ of the S. E. ¼ of sec. 6, south of the C. & N. W. railway track; sec. 7 and 8, 47-26. Recorded April 16, 1883, Liber 3 of Miscellaneous Records, page 637.

Mr. ELDREDGE: An agreement dated January 3, between Edward Breitung of Negaunee, party of the first part, and Arthur Meeker, Wm. L. Brown, of the city of Chicago, State of Illinois, and Martin D. Smith of Appleton of the State of Wisconsin, and Andrew C. Clark of Chicago. State of Illinois, parties of the second part.

38. October 2, 1882, Arthur B. Meeker, Wm. L. Brown, Henry D. Smith and Andrew G. Clark assigned the contract described in No. 37, to Henry Hewitt, Jr., recorded in Liber 3, Miscellaneous Records, page 638. Recorded April 16, 1883:

39. December 29, 1882, Henry Hewitt, Jr., assigned a ¼ interest in the above contract to Ramsey & Jones; recorded April 16, 1883, Liber 3 of Miscellaneous Records, 638.

40. August 18, 1893, Henry Hewitt and wife conveyed to Charles H. Jones, by warranty deed, an undivided ¼ of the lands shown on plat 8. Recorded October 28, 1893, Liber 28 of Deeds, 140.

108 41. Henry Hewitt, Jr., to Charles H. Jones, Nov. 27, 1893, assigned to Edward N. Breitung the contract referred to in No. 37, recorded Nov. 10, 1899, Liber 8 of Miscellaneous Records, 18.

42. Dec. 8, 1893, Chas. H. Jones and Burton Ramsey quit-claimed to Edward N. Breitung the lands described in the above contract, that portion of the S. ½ of the S. E. ¼ of sec. 6, 47-26, which lies south of the Chicago & Northwestern Railway track, as the same was located on Jan. 31, 1882, and other lands described in paragraph 37, above. Recorded in Liber 29 of Deeds, 195.

43. Dec. 13, 1893, Frankie M. Jones, wife of Charles H. Jones, conveyed to Edward N. Breitung, her dower interest in the lands described in the contract between Edward Breitung and Arthur B. Meeker and others. Rec. Dec. 27, 1893. Liber 28, 221.

44. Dec. 11, 1893, Kate Ramsey, wife of Burton Ramsey, quit-claimed to Edward N. Breitung her dower in the lands described in the above contract. Recorded Dec. 27, 1893, Liber 28, 222.

45. Jan. 2, 1894, Edward N. Breitung and wife quit-claimed to Mary Kaufman an equal undivided half-interest of the said parties of the first part acquired by virtue of the quit-claim deed executed by Charles H. Jones and Burton Ramsey, bearing date Dec. 8, 1893; recorded in the office of the register of deeds of Marquette county in Liber 29, 195, and by virtue of the quit-claim deeds bearing date respectively Dec. 11, 1893, and Dec. 13, 1893, and executed respectively by Kate G. Ramsey and Frankie M. Jones, and respectively recorded in the register of deeds office aforesaid, in Liber 28 of

Deeds, 221, and Liber 28 of Deeds, page 222; in and to all that portion of the S. E. ¼ of the S. W. ¼ of sec. 6, and the S. E. ¼ of sec. 6, which lies south of the Northwestern Railway track as the same was on the 31st day of January, 1882. Also all of sections 7 and
109 8, in township 47 north of range 26 west. Recorded Jan. 15, 1894, Liber 28, 231.

All the instruments and conveyances introduced by complainants in the foregoing were for the purpose, among others, of showing the state of the title to the lands described in the bill of complaint.

46. Harvey to Maxim Perin, warranty deed, of about six and one-half acres in the S. E. ¼ of sec. 6, described by metes and bounds; dated Jan. 15, 1867; recorded May 24, 1869, Liber J, 321.

Mr. HOYT: That is objected to. There has been an erasure in the record, and it is not in the same handwriting.

Judge BROWN:

47. Harvey to John Blais, a warranty deed, of about six acres—or seven, I guess it is—in the S. E. ¼ of sec. 6, 47-26, dated Jan. 15, 1867; recorded June 8, 1869, Liber J, 342.

48. Harvey to Joseph Boyer, warranty deed, about 10.9 acres in the S. E. ¼ of sec. 6, specifically described as follows: Beginning at a point 40 rods due east from the iron post set in the center of said section; running thence south 21 chains, 60 links; thence east 20 rods; thence north 21 chains and 60 links; thence west 20 rods to the place of beginning,—containing about 10.9 acres.

Dated Jan. 15, 1867; recorded July 11, 1867, Liber H, 421.

49. Harvey to Michael T. Gaffney, warranty deed. About 11 acres in the southeast quarter of section 6, described by meets and bounds as follows: Beginning at a point 80 rods due east of the iron post in the center of said section 6, and running thence south 23 chains and 22 links; thence east ten rods; thence north 23 chains and 63 links; thence west 10 rods to the place of beginning, containing
110 5.8 acres. Also in the same section 6, township 47 north, range 26, as aforesaid, an additional tract of land described as follows: Beginning at a point 60 rods due east of the iron post in the center of said section, and running thence south 22 chains and 43 links; thence east 10 rods; thence north 22 chains and 88 links; thence west 10 rods to the place of beginning, containing about 5.6 acres, more or less. Said deed dated July 15, 1868, recorded December 6, 1870, in Liber K, at page 457.

50. Harvey to Gaffney, warranty deed, a lot in the east part of the S. E. ¼ of sec. 6, dated Jan. 15, 1867; recorded Nov. 3, 1867, Liber H of Deeds, 623.

51. Harvey to Joseph Engles, warranty deed, dated Jan. 15, 1867; recorded July 17, 1867, Liber H, 436. A strip of land in S. E. ¼ of sec. 6.

52. Harvey to B. Bellavoux, warranty deed, of a strip of land in the N. E. ¼ of sec. 6, about 6 acres; dated Jan. 15, 1867; recorded June 6, 1872, Liber M, 21.

53. Harvey to Caesar Charles, warranty deed of a strip of land in the S. E. ¼ of sec. 6, dated Jan. 15, 1867; recorded June 4, 1867, Liber H, 394.

54. Charles T. Harvey, quit claim to Negaunee Iron Company, all interest in the lands covered by this mortgage. Said mortgage dated August 18, 1873. Said quit claim dated January 10, 1882. Recorded January 31, 1882, Liber X of Deeds, 105.

55. Pioneer Iron Company to James L. Reynolds, warranty deed, 543 acres in sections 5 and 6, 47-26, and in sections 31 and 32 in 48-26, as in plat No. 4; dated Sept. 10, 1862. Recorded Nov. 10, 1862, Liber D, 119.

Copy appears as Exhibit No. 3 extra, and is as follows:

This indenture, made this 10th day of September in the year of our Lord one thousand eight hundred and sixty-two, between
111 the Pioneer Iron Company of Marquette county, Michigan, a corporation existing and holding its franchises under and by virtue of the laws of State of Michigan of the first, and James L. Reynolds of the city of Chicago and State of Illinois of the second part, WITNESSETH: That the said party of the first part, for and in consideration of the sum of twenty-five hundred and forty-three ($2,543) dollars, to it in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold, remised, released, aliened and confirmed and by these presents, does grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part, his heirs and assigns, forever, all that parcel of land situated in the town of Negaunee, county of Marquette and State of Michigan, known and described as follows, to wit:

The land described and conveyed is marked red on plat No. 4 herein. Together with all and singular the hereditaments and appurtenances as thereunto belonging or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof and all the estate, right, title, interest and demand whatsoever of the said party of the first part, either in law or equity, of, in and to the above bargained premises, with the said hereditaments and appurtenances, to have and to hold the said premises as above described with the appurtenances unto the said party of the second part, and to his heirs and assigns, forever, and the said party of the first part, for its assigns, does covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents it is well seized of the premises above described as of a good, sure, perfect, absolute and indefeasible estate of inheri-
tance in the law in fee simple and that the above bargained
112 premises in the quiet and peaceful possession of the said party of the second part, his heirs and assigns, all and every person or persons lawfully claiming or to claim the whole or any part thereof, it will forever WARRANT AND DEFEND.

In witness whereof, the party of the said first part has hereunto set his hand and seal the day and year first above written, and caused these presents to be signed by its president and secretary, duly authorized thereto by vote of the directors thereof.

WM. PEARSALL,
Pres. Pioneer Iron Co.
MOSES A. HOPPOCK,
Sec'y pro Tem. Pioneer Iron Co.

Signed, sealed and delivered in the presence of
SAM'L I. W. BARRY.
ALEX FULLERTON.

Duly acknowledged in the city of New York on the 22nd day of October, 1862, before

A. S. VAN DUZER,
A Commissioner for New York, Appointed by the Governor of Michigan.

56. Pioneer Iron Company to the Arctic Iron Company. Conveys all its mineral interest in 24.25 acres in the S. ½ of sec. 6, as per plat No. 7, dated Sept. 14, 1889; recorded Jan. 28, 1890, Liber 22, pages 117–119.

Copy appears as Exhibit No. 4 extra, and is as follows:

This indenture, made this fourteenth day of September in the year of our Lord one thousand eight hundred and eighty-nine, between the PIONEER IRON COMPANY, a corporation organized and existing under and pursuant to the laws of the State of Michigan, party of the first part, and the ARCTIC IRON COMPANY, also a corporation organized and existing under and pursuant to the laws of the said State, party of the second part, WITNESSETH, that the
113 said party of the first part, for and in consideration of the sum of one dollar, to it in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold, remised, released, aliened and confirmed and by these presents does grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part and to its successors and assigns forever, all it- rights, title and interest to all ores and minerals now existing, or that may be hereafter discovered on or in the following described tract of land, "sitting" lying and being in the county of Marquette and State of Michigan, known and described as follows: It conveys the lands marked red on plat No. 7 herein, containing twenty-four and twenty-five one-hundredths acres more or less. The said party of the second part and its successors, assigns and lessees shall have the right at any

time to enter and explore for ores and minerals on said tract of land east of the wire fence running north and south thereon, except in the iron yard of the furnace known as the PIONEER FURNACE west of the trestle of the Marquette & Western Railway Company, without cost or compensation to the said party of the first part, but all holes and test pits so made in exploring, shall be filled up by the said party of the second part, when such exploration shall be completed. The said party of the second part shall be solely liable for damages to third parties that may be caused by such explorations and shall save the said party of the first part, its successors and assigns harmless from all damage, cost and expenses caused thereby. In case said party of the second part, its assigns or lessees shall discover a mine or mines of ore or mineral upon or in said tract, said party of the second part, its successors and assigns shall have the right
114 to purchase in fee simple, by warranty deed, free and clear of all incumbrances, so much of said above described tract of land as may be required for mining purposes at one hundred ($100) dollars per acre, at any time within five years from the date hereof, or at any time within five years from September 14, 1894, at one hundred and fifty ($150) dollars per acre, in addition to the value of any improvement made on the land so sought to be acquired subsequent to the said September 14, 1894, but no part of the said tract of land shall be so acquired for dumping rock or debris north of the south line of the right of way of the main track of the Chicago & Northwestern railway. Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion, reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest and demand whatsoever of the said party of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances. To have and to hold the said premises as above described with the appurtenances unto the said party of the second part and to its successors and assigns forever. And the said party of the first part for itself and its successors does covenant, grant, bargain and agree to and with the said party of the second part, its successors and assign-, that at the time of the ensealing and delivery of these presents, it is well seized of the premises above described as of a good, sure, perfect, absolute and indefeasible estate of inheritance in the law in fee simple and that the said lands as above described, are free from all incumbrances whatever and that the above bargained premises in the quiet and peaceful possession of the said party of the second part, its successors and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, it shall and will forever WARRANT AND DEFEND.

115 *In witness whereof*, the said party of the first part hath caused its corporate seal to be hereunto affixed and the same

to be attested by its president and secretary, the day and year first above written.

PIONEER IRON COMPANY,
By C. J. CANDA, *President.*

Signed, sealed and delivered in the presence of
JOHN RANKIN.
F. HUDSON.

Attested by
H. GROENEMEYER, *Secretary.* [SEAL.]

Duly acknowledged in the city and county of New York on the 26th day of December, 1889, before

JOHN RANKIN,
Commissioner for Michigan.

57. Pioneer Iron Company to James L. Reynolds, a mortgage upon certain lots conveyed by Harvey to the Pioneer Iron Company, plat No. 2, as described, for $20,000. Dater April 21, 1857. Recorded July 3, 1857, Liber 1 of Mortgages, page 129.

Copy appears as Exhibit No. 5 extra, and is as follows:

The Pioneer Iron Company
to
James L. Reynolds.

Whereas, the Pioneer Iron Company, party of the first part, of Marquette in the county of Marquette, in the State of Michigan, executed four certain promissory notes of even date herewith, payable to James L. Reynolds or order, at one, two, three and four years after the date hereof for the several sums of five thousand dollars each and interest accruing annually, namely, the first for sixty-four hundred dollars ($6,400) the second for six thousand and
116 fifty dollars ($6,050) the third for fifty-seven hundred dollars ($5,700) the fourth for fifty-three hundred fifty dollars ($5,350) numbered as in order of maturity respectively No. 1, No. 2, No. 3, No. 4, and amounting in all to the sum of $23,500.

Now therefore, the said Pioneer Iron Company, party of the first part, to secure the payment of said notes according to their tenor and effect in consideration of one dollar and the further sum of twenty thousand dollars, the receipt whereof is confessed, doth grant, bargain, sell and convey unto James L. Reynolds, of the county of Cook, in the State of Illinois, his heirs and assigns forever, the premises described as follows, to-wit: The south east quarter and the east half of the south west quarter of section thirty-one (31) two hundred forty acres (240) also the west half and the south west quarter of the north east quarter and the north west quarter of the south east quarter four hundred (400) acres of section

thirty-two (32), all in township number forty-eight (48) north of range No. twenty-six (26) west amounting to six hundred forty (640) acres in the same. Also the east half and the north half of the north west quarter and south west quarter of north west quarter (424.68 acres) of section one (1). Also south half of north east quarter, north west quarter of north east quarter, east half of north west quarter, north west quarter of north west quarter and the south west quarter (387.64 acres) of section No. two (2). Also the south half and the north half of the north half and the south half of the north west quarter and the south west quarter of the northeast quarter (587.94 acres) of section No. three (3). Also all of section No. four (4) (632.36 acres). Also the north half and the north half of the south east quarter and the south east quarter of south east quarter (430.36 acres) of section No. five (5), also the north half of the
117 north east quarter and the south east quarter of the north east quarter (114.69 acres) of section No. six (6), all in township No. forty-seven (47) north of range No. twenty-six (26) west, containing twenty-five hundred seventy-seven and 67-100 acres (2577.67) in the same. Also the west half of the north west quarter (64.24 acres) of section No. six (6), township No. forty-seven north (47) of range No. twenty-five (25) west of meridian of Michigan and containing according to United States survey, three thousand two hundred eighty-one and 91-100 acres (3281.91), all being situated in the said county of Marquette, State of Michigan.

Together with all and singular the privileges and appurtenances thereunto belonging. In trust nevertheless that in case default be made in the payment of said notes for sixty days or any part thereof, according to the tenor and effect of said notes, then on the application of the legal holder of each or all of said notes, the said James L. Reynolds after publishing a notice in a newspaper printed in the county of Marquette one hundred days before the day of such sale, to sell the said premises and all right and equity of redemption of the said Pioneer Iron Company, party of the first part, its successors, heirs and assigns therein at public auction at the court house door in said Marquette county to the highest bidder for cash at the time mentioned in such notice. And to make, execute and deliver to the purchasers thereof a deed or deeds for the premises sold, and out of the proceeds of such sale to pay all costs or expenses incurred in advertising and selling said premises. Also the principal and interest due on said notes. And the said Pioneer Iron Company, party of the first part, for itself, its corporate successors, heirs, executors and administrators, covenants with the said James L. Reynolds that it is seized of said premises in fee simple, and that it has
118 good right and full power to grant, bargain and sell the same in form aforesaid, that the same are free from all incumbrance, and that it will, and its heirs, executors and administrators shall forever warrant and defend the same against the lawful claims of all present.

Signed and sealed the twenty-first day of April, A. D. 1857.

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In witness whereof, the Pioneer Iron Company, by order of its board of directors, have caused this instrument to be signed by its president and the seal of said company to be hereto attached, attested by its secretary.

WM. PEARSALL,
Pres't Pioneer Iron Co.

L. T. MERRILL, *Sec'y.*
JOHN LIVINGSTON. [SEAL.]

Duly acknowledged before John Livingston, commissioner for Michigan, in New York, on the 23d day of April, 1857.

58. Pioneer Iron Company to Iron Cliffs Co., lease and sale for ten years of all its real and personal property, iron workings, buildings, lands and rights, etc., subject to the reservations named therein, dated March 10, 1866; recorded March 10, 1866, Liber 1 of Miscellaneous Record, pages 185–190.

Copy appears as Exhibit No. 6 extra, and is as follows:

Articles of Agreement.

This agreement made and entered into in the city of New York this tenth day of March, one thousand eight hundred and sixty-six, between the Pioneer Iron Company of the first part and the Iron Cliffs Company of the second part, both companies being corporations under the laws of the State of Michigan,

Witnesseth, that in consideration of one dollar and the
119 mutual covenants hereinafter stated and for other mutual considerations respectively moving the parties hereto agree:

First. The Pioneer Iron Company agree to lease to the Iron Cliffs Company for ten years from the date of this instrument their entire real and personal property situated in Marquette county, Michigan, consisting of all their iron works, buildings, lands and rights, including the full and entire privilege of mining and getting iron ore under the existing lease or contract with the Jackson Mining Company for the purpose of making pig iron (but reserving the rights and pr-vileges hereinafter named). And entire and immediate possession of said property is hereby and now given to said Iron Cliffs Company according to the provisions of this instrument.

Second. The Iron Cliffs Company agree to begin as early as the weather will permit to put the best one of the Pioneer Iron Company's furnaces in running order and to begin to run the same when it is ready, furnishing standing wood "gratuitously," and to prosecute said work with all reasonable energy and skill, the repairs and rebuilding of this furnace not to exceed twelve thousand — (-12,000). The Iron Cliffs Company also agree to advance on account of the Pioneer Iron Company, to be refunded as hereinafter provided, all the funds necessary for said repairs and rebuilding, not to exceed the above named sum. The Iron Cliffs Company to have the priv-

ilege at any time within the period of this contract they elect to do so of putting the second furnace in running order and running it on the same terms, conditions and privileges as the first above named, that is, the cost not to exceed twelve thousand dollars.

Third. The Iron Cliffs Company agree to pay for the rent and use of the said property hereby demised and leased from time to time as hereinafter provided a sum of money which shall be equal
120 to one-third the net profits which shall be annually made and realized upon the manufacture and sale of the pig iron produced by the said furnaces—no stumpage being charged upon wood cut upon the lands of the Iron Cliffs Company, and no general or other expenses incurred by the Iron Cliffs Company shall be charged against the net profits except such as directly belong to or are incurred in and by the manufacture and sale of said pig iron.

Fourth. It is hereby further understood and agreed that the sum equal to one-third of net profits realized is to be applied by the said Iron Cliffs Company on account of the said Pioneer Iron Company to the payment of all taxes from time to time when due on the said real and personal property covered by this instrument, also to the payment of the now existing debts of the said Pioneer Iron Company and the repayment to the Iron Cliffs Company of any advances and interest thereon.

The Pioneer Iron Company recommend that the claim of Mr. J. B. B. Case shall have early attention. It being understood that in case of any suits prosecuted or defended by or against the Pioneer Iron Company or in defending the possession of said property and the interests of said Iron Cliffs Company under this instrument that the necessary funds shall be furnished from before said sum equal to one-third ($\frac{1}{3}$) net profits realized to pay the costs of said suits. And after the payment of said now existing debts, including interest on the same and taxes and costs of suits as above, the balance of said sum equal to one-third the net profits realized shall from time to time be paid by said Iron Cliffs Company to said Pioneer Iron Company.

And it is hereby understood and agreed that the said payment may be made by said Iron Cliffs Company directly to the
121 stockholders of the said Pioneer Iron Company by dividends and distribution thereof to them in proportion to their respective shares of stock in lieu of paying the same to the officers of the said Pioneer Iron Company unless the said Pioneer Iron Company shall notify the said Iron Cliffs Company in writing to pay the said sum to the treasurer of the said Pioneer Iron Company, and such payment to stockholders shall be held to be payment to said company to the amount so distributed among the stockholders, and it shall be the duty of the Pioneer Iron Company to furnish a list of the said stockholders whenever it is required by the Iron Cliffs Company.

Fifth. It is also further understood and agreed that those accounts relating to the Pioneer Iron Company's property and interest which

are kept by the Iron Cliffs Company shall be always open to the inspection of the officers and stockholders of the said Pioneer Iron Company, and that the Iron Cliffs Company shall make and forward to the president of the Pioneer Iron Company regularly every six months a statement and balance sheet giving a true exhibit of the said accounts, and any of the said net profit realized and other funds to which said Pioneer Iron Company may be entitled shall be paid over every six months as herein provided to the said creditors and others according to the provisions of this instrument.

Sixth. It being understood by the parties that a certain mortgage is held against the said property of the Pioneer Iron Company by Moses A. Hoppock and others on which there is now claimed to be due by said mortgage-s a balance of principal and interest of between thirty-seven and thirty-eight thousand dollars, it is agreed by the parties that in case the property included in this instrument shall be sold under said mortgage by virtue of any power of sale therein contained or under or by virtue of any judgment or decree
122 or other judicial proceedings at law or in equity growing out of said mortgage or otherwise so as to deprive the Iron Cliffs Company of the full and entire use of the same, that in such an event this instrument may at the election of said Iron Cliffs Company be annulled. And that such a result and event shall be regarded and treated by the parties to this instrument as a legal but unintentional and unavoidable breach of this contract on the part of the said Pioneer Iron Company and that any legal claim for advances and for repairs, as aforesaid, and any legal claim for damages for said breach of contract shall and hereby is declared to be a lien upon the said property of said Pioneer Iron Company for the purpose of securing the said Iron Cliffs Company.

It being understood and agreed by the parties that the Pioneer Iron Company shall and will warrant and defend said Iron Cliffs Company in the quiet and peaceable possession of said property during the term aforesaid.

Seventh. The Pioneer Iron Company reserve the right of selling or leasing *and* building lots, farming or wood lands, timber and mineral privileges except the Jackson Mine contract and the privilege of cutting not to excess ten thousand cords of wood as hereinafter provided and excepting all furnaces, machinery, building kilns, horses, roads, water and lands proper and necessary for the use of the same with the right of ingress and egress and the full and complete use of said property as may be necessary in all iron making operations on the following conditions, to-wit:

Ninety per cent. of the proceeds of such sales or leases shall be applied toward the debts of said Pioneer Iron Company and on the Iron Cliffs Company receiving satisfactory assurance that such application has been made they are to release from the operation of this instrument such lands, and privileges, or in case said
123 ninety per cent. of such proceeds shall be paid to said Iron Cliffs Company they will apply the same toward the extinguish-

ing of said debts and the said ninety per cent is hereby agreed and declared to be under the same rules and restrictions and to be paid to the same parties and to be applied and appropriated to the same uses as the aforesaid sum equal to one-third of the net profits realized. And the same is hereby mutually pledged by the parties to this instrument to those purposes and those only.

Eighth. It is agreed that a careful inventory be taken of all the personal property now owned by the Pioneer Iron Company and now on their said property, except the cord wood which is sold to the Iron Cliffs Company as hereinafter provided, which said personal property or an equivalent in kind of personal property is to be returned to the said Pioneer Iron Company at the expiration of this lease.

Ninth. The Iron Cliffs Company agree to protect and save harmless the Pioneer Iron Company and any stockholders thereof against any debts contracted or permitted by said Iron Cliffs Company and against all costs in consequence thereof during the continuance of this instrument.

Tenth. It is further agreed that in case the Iron Cliffs Company permit both the furnaces to be idle for a longer period than one year at one time the Pioneer Iron Company may put one or both the furnaces in blast thereby rendering this contract null and void as to the furnace which the Pioneer Iron Company may themselves run.

Eleventh. The Iron Cliffs Company agree to leave the said property at the expiration of this lease in as good condition as reasonable use thereof will permit, with due allowance for ordinary wear, tear and damage by the elements.

121 Twelfth. The Pioneer Iron Company hereby sell and do hereby deliver to the Iron Cliffs Company, all the cord wood now cut upon said premises, it being supposed by them to be over seventeen hundred cords at one dollar and fifty cents per cord, the whole amount of which purchase price is to be paid to creditors of said Pioneer Iron Company as soon as such amount can be determined by measurement of said wood. The Pioneer Iron Company hereby further agree to sell to said Iron Cliffs Company the privilege of cutting and using not to exceed ten thousand cords of wood measurement to be made in rank and on the kiln bank or in woods about the first of each month in presence of such agent as the Pioneer Iron Company may see fit to send on the ground to witness the measurement, said wood to be situated convenient to the kiln east of the furnace, the wood to be paid for by the said Iron Cliffs Company in kind, that is to say—the same number of cords as near as may be estimated by a disinterested party of standing wood is to be set apart by the Iron Cliffs Company on their lands for the use of the Pioneer Iron Company, said wood to be no greater distance from the Pioneer furnaces than this wood above named and as convenient for hauling.

Thirteenth. And in consideration of the provisions of this instru-

ment the Pioneer Iron Company hereby sell, assign, transfer and set over to said Iron Cliffs Company all contracts for the sale of lots in the village of Negaunee and the money now due or to become due thereon, is to be collected by said Iron Cliffs Company and the proceeds applied by them in the same manner and be subject to the same terms under provisions and restrictions as provided for in reference to the said sum equal to one-third of the net profits realized.

This instrument is duly signed, witnessed and acknowledged.

125 59. We now offer in evidence a certified copy of the following reports by the Pioneer Iron Company and the accompanying certificates of the auditor general of the State of Michigan.

Mr. HAYDEN: Do you care to state the purpose of this evidence?

Judge BROWN: Yes, I have no objection to stating it. It is for the purpose of showing, or tending to show, when they went out of business.

Mr. HAYDEN: We object to these reports as immaterial.

Mr. SHAULL: We offer an annual report dated July 13, 1857, signed L. T. Merrill, secretary of the Pioneer Iron Company.

Read to the court and marked Complainant's Exhibit A, and is as follows:

UNITED STATES OF AMERICA, } ss:
State of New York, }

By this public instrument be it known, to all whom the same doth or may in anywise concern, that I, Edward Payson Clark, a public notary in and for the State of New York, by letters patent under the great seal of the said State, duly commissioned and sworn, dwelling in the city of New York,

Do hereby certify, that on this 13th day of July, 1857, before me came L. T. Merrill, secretary of the Pioneer Iron Company, to me known and deposed that the annexed statement by him subscribed was true in all particulars.

In testimony whereof, I have subscribed my name, and caused my notarial seal of office to be hereunto affixed, the thirteenth day of July in the year of our Lord one thousand eight hundred and fifty-seven.

(Signed) EDWARD P. CLARK,
[SEAL.] *Notary Public for the State of New York.*

126 Annual report to the auditor general of the State of Michigan from Pioneer Iron Company, doing business in the county of Marquette, in said State, and in accordance with sections 18 and 19 of the general mining law of said State.

1st. No iron or other minerals have been mined by this company during the year past, as they have but just commenced preparations for business.

2nd. The amount of capital actually paid in is $35,000. The amount borrowed, nothing, and the amount remaining unpaid, nothing.

In witness whereof, the undersigned president, and majority of the board of directors of said Pioneer Iron Company have hereunto set their hands this 13th day of July, 1857.

(Signed) WM. PEARSALL, *President.*
CHAS. T. HARVEY.
J. M. MACKAY.
MOSES A. HOPPOCK.

Office of the Pioneer Iron Company, 189 Broadway.

NEW YORK, *July* 13, 1857.

I certify that the foregoing statement is correct in all its particulars.

(Signed) L. T. MERRILL,
["GREAT SEAL."] *Secretary Pioneer Iron Co.*

STATE OF MICHIGAN, } ss:
Department of Auditor General, }

I, John F. Wilkinson, auditor general of the State of Michigan, hereby certify, that I have compared the annexed copy of report of the Pioneer Iron Company filed in this department August 24, 1857, with the original report now on file in this department and
127 that it is a true transcript therefrom and of the whole of such original report.

In testimony whereof, I have hereunto set my hand, at Lansing, this 27th day of October in the year of our Lord one thousand nine hundred.

(Signed) JOHN F. WILKINSON,
Deputy Auditor General.

The next is dated New York, July 17, 1858, signed by the president and three directors, and duly certified to by L. T. Merrill, and sworn to.

Paper marked Exhibit B is as follows:

Duplicate.

NEW YORK, *July* 17, 1858.

In accordance with the provisions of sections 18 and 19 of the general mining law of the State of Michigan, the Pioneer Iron Company, a corporation organized under said act for the purpose of mining and manufacturing iron ore in the county of Marquette in said State would make the following report compiled from balance drawn from the books to the 1st June last.

1st. That they have mined no iron ore on their property, having been exclusively engaged in manufacturing pig iron from ore obtained from the Jackson Iron Company.

2nd. The amount of capital actually paid in is one hundred thousand dollars ($100,000).

3rd. The amount borrowed and remaining unpaid is twenty-five hundred dollars ($2,500).

All of which the undersigned, comprising a majority of the board of directors of said company, would certify to be correct, and respectfully submit.

(Signed) WM. PEARSALL, *President.*
MOSES A. HOPPOCK.
JOHN C. TUCKER.
J. M. MACKAY.

128 I, Luke T. Merrill, secretary of the Pioneer Iron Company, do hereby certify that the above report is true and correct in all its particulars.

In witness whereof, I have hereunto set my hand and the seal of the company this 17th day of July, 1858.

(Signed) LUKE T. MERRILL, *Secretary.* [SEAL.]

Sworn to before me this 26th day of July, 1858.

(Signed) W. W. BOGARDUS,
[GREAT SEAL.] *Commissioner of Deeds.*

STATE OF MICHIGAN, *Department of Auditor General,* } ss:

I, John F. Wilkinson, auditor general of the State of Michigan, hereby certify, that I have compared the annexed copy of report of the Pioneer Iron Company filed in this department July 31, 1858, with the original report now on file in this department, and that it is a true transcript therefrom and of the whole of such original report.

In testimony whereof, I have hereunto set my hand, at Lansing, this 27th day of October in the year of our Lord one thousand nine hundred.

(Signed) JOHN F. WILKINSON,
Deputy Auditor General.

The next I offer is dated the — day of July, 1859, and signed by Wm. Pearsall, president, and three directors of the company, and sworn to by John Nelson, secretary of the Pioneer Iron Company, before Isaac Van Winkle, notary public, on the 29th day of July, 1859.

Paper marked Exhibit C " and contains a clause as follows:

2nd. The amount borrowed and remaining unpaid by the
129 Pioneer Iron Company at the date of this report is $76,750."

The next is dated July 31, 1860, signed by Wm. Pearsall,

president, and three of the directors, and being sworn to by John Nelson, secretary of the company, on the 31st day of July, 1860, before Isaac Van Winkle, notary public.

Paper marked Exhibit D "and contains a clause as follows:

That from the 1st of September, 1859, to the 30th of June, 1860, they have made from ore mined by the Pioneer Iron Company, 3880 tons of pig iron."

I now offer a paper reading as follows:

"October 27, 1900.—I, John F. Wilkinson, deputy auditor general of the State of Michigan, do hereby certify that I have made diligent examination of the files and records of this department for reports of the Pioneer Iron Company, and from such search and examination find report filed Aug. 24, 1857; report filed July 31, 1857; report filed Aug. 2, 1859; report filed Aug. 4, 1860. That the above and foregoing are the only reports filed in this department by the above named company, and that no reports appear to have been filed subsequent to Aug. 4, 1860, to this date. In witness whereof, I have hereunto set my hand in the city of Lansing, on the day and year herein above named."

(Paper marked Exhibit E.)

Mr. SHAULL: I now offer a duplicate of the first exhibit filed in the auditor general's office, which was filed in the county clerk's office of Marquette county.

Mr. HAYDEN: You mean the report of 1857?

Mr. SHAULL: The report of 1857, a duplicate of the report.

Mr. HAYDEN: The same objection to this.

130 Mr. SHAULL: The annual report filed in the office of the county clerk, of the same company, the Pioneer Iron Company, signed by Wm. Pearsall, president, C. W. Mackey, Moses Hoppock, and Charles T. Harvey, and was filed Sept. 7, 1857.

Also the annual report of the same company dated New York, July 17, 1858, filed in the office of the county clerk of Marquette county, Aug. 2, 1858; signed by Wm. Pearsall, president, Moses Hoppock, John C. Tucker and J. M. Mackey. Duly certified to by Luke T. Merrill, secretary.

I also offer annual report of the Pioneer Iron Co., for 1859, undated; signed Wm. Pearsall, president; J. R. Mackey, Moses A. Hoppock and John C. Tucker; certified to by John Nelson, secretary, and filed in the office of the county clerk of Marquette county, Sept. 15, 1859.

I also offer annual report of the Pioneer Iron Company for the year ending June 30, 1860, signed Wm. Pearsall, president; J. M. Mackey, Moses A. Hoppock, and John C. Tucker; sworn to by John Nelson, before Isaac Van Winkle, notary public, on the 31st of July, 1860, and filed in the office of the county clerk of Marquette county on Aug. 9, 1860.

I also offer the annual report of the Pioneer Iron Company, dated Marquette, L. S., July 30, 1861, covering the period from June 30, 1860, to the 1st day of July, 1861, inclusive, signed by B. B. Case,

superintendent; Wm. Pearsall, president; Charles T. Harvey, C. W. Mackey and Moses A. Hoppock, directors. Sworn to by John Nelson, secretary, before Isaac Van Winkle, notary public, July 31, 1861. Filed in the office of the county clerk of Marquette county on the 16th of September, 1861.

I also offer the certificate of Wm. A. Ross, clerk of the cir-
131 cuit court of Marquette county, to the effect that he has made search in the files and records in his office and that the foregoing are the only reports filed in this county by the Pioneer Iron Company.

Mr. HOYT: We carry along our objection, as incompetent and immaterial. The certificate cannot be proof of the fact if the fact was competent, but we claim the facts are not competent or material.

Judge BROWN:

60. Pioneer Iron Company to John C. Tucker, Moses A. Hoppock and William Pearsall, a mortgage, dated Dec. 6, 1859; recorded Jan. 27, 1860, Liber 1 of Mortgages, page 277.

Copy appears as Exhibit No. 7 extra, and is as follows:

This indenture, made this sixth day of December, in the year of our Lord one thousand eight hundred and fifty-nine, between the Pioneer Iron Company, a corporation organized under the laws of the State of Michigan, of the first part, and John C. Tucker and Moses A. Hoppock, of the city and State of New York, and William Pearsall, of Jersey City and State of New Jersey, of the second part

Whereas, the said party of the first part is indebted to the said John C. Tucker for the following several sums of money paid by him on their account on the days following and for interest thereon at the rate of 7 per cent. per annum on each sum from the said day of its advance, respectively, to-wit:

$25,000 advanced September 10, 1859.
$2,500 advanced September 24, 1859.
$4,000 advanced October 1, 1859.
$2,000 advanced October 22, 1859.
$2,500 advanced October 25, 1859.
$3,500 advanced November 4, 1859.

And whereas, the said John C. Tucker is liable as endorser
132 for said party of first part for their accommodation on notes which will mature as follows:

One note maturing January 6, 1860, for $3,500.
One note maturing January 10, 1860, for $2,125.
One note maturing February 15, 1860, for $1,616.67, which said indebtedness accrued and to accrue amounts in the aggregate without interest to the sum of $24,291.67.

And whereas, the said party of the first part is in like manner indebted unto the said Moses A. Hoppock for the following sums

advanced with interest on each from the date of its advancement at the rate of seven per cent. per annum, to-wit:

$10,733.62 advanced September 9, 1859.
$2,500 advanced October 8, 1859.
$300 advanced October 14, 1859.
$3,400 advanced November 7, 1859.
$300 advanced November 21, 1859.

And whereas, said Moses A. Hoppock is liable as accommodation endorser on the notes of said party of the first part which will mature as follows, namely:

One note maturing January 10, 1860, for $2,125.

One note maturing February 15, 1860, for $1,666.67, which said indebtedness accrued and to accrue amounts in the aggregate without interest to the sum of $21,025.29.

And whereas, the said William Pearsall has endorsed for the accommodation of said party of the first part the notes of said party of first part which will mature as follows, namely:

One note maturing December 9, 1859, for $5,000.
One note maturing December 17, 1859, for $5,000.
One note maturing December 19, 1859, for $4,000.
One note maturing December 26, 1859, for $5,000.
One note maturing January 11, 1860, for $3,000.
One note maturing January 24, 1860, for $2,500.
133 One note maturing January 25, 1860, for $4,000.
One note maturing February 4, 1860, for $4,000.
One note maturing February 15, 1860, for $1,666.66.
One note maturing 21st March, 1860, for $5,000, said notes amounting in the aggregate without interest to the sum of $39,166.66;

And whereas, it is contemplated that the said notes so as aforesaid endorsed by the said Tucker by the said Hoppock and by said Pearsall respectively may hereafter be renewed and extended by new notes from time to time in whole or in part with the same endorsers respectively and with or without additional endorsers;

And whereas, the said party of the first part desires to secure the payment of all of the aforesaid indebtedness as hereinafter more particularly provided, and did authorize this mortgage by a resolution of the stockholders passed at a meeting of the said Pioneer Iron Company held in New York on the 25th day of October, 1859.

And whereas, at the same meeting it was resolved that a subscription to the amount of ten thousand dollars be solicited from the stockholders for the purpose of cutting twenty thousand cords of wood during the ensuing winter and that the said ten thousand dollars be secured to the subscribers thereof in the aforesaid mortgage to the said Tucker, Hoppock and Pearsall, payable in one year from the date of the said mortgage with interest at seven per cent.

Now, therefore, this indenture witnesseth, that the said party of first part in order to secure the payment of all and singular the said indebtedness hereinbefore set forth and of any notes or securities which may be given to extend, renew or otherwise secure the same

or any part thereof and any and all interest thereon and also
134 to secure payment with interest of any and all subscriptions
for the purpose of furnishing money to cut wood as aforesaid and in consideration of the premises and of one dollar to the said party of the first part in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged.

Have granted, bargained, sold, remised, released, aliened and confirmed and by these presents, do grant, bargain, sell, remise, release, alien and confirm unto the said parties of the second part and unto their heirs and assigns forever as joint tenants and not as tenants in common, all and singular those certain pieces and parcels of land situate lying and being in the county of Marquette and State of Michigan, known and described as follows, to-wit: The west half and the southwest quarter of the northeast quarter and the northwest quarter of the southeast quarter of section 32 (400 acres). Also the southeast quarter and the east half of the southwest quarter of section No. 31 (240 acres), being in the township No. forty-eight (48) north of range No. twenty-sx (26) west containing 640 acres in the same. Also the east half and north half of the northwest quarter and southwest quarter of northwest quarter (424.60) acres of section one (1). Also south half of the northeast quarter, northwest quarter of northeast quarter, east half of northwest quarter and northwest quarter of northwest quarter and the southwest quarter (387 64-100 acres) of section No. two (2). Also the south half and the north half of the north half and the south half of the northwest quarter and the southwest quarter of the northeast quarter (587 94-100 acres) of section No. 3 (three). Also all of section No. 4 (four) (632 36-100 acres). Also the north half and the north half of the southeast quarter and the southeast quarter of the southeast
quarter (430 36-100 acres) of section No. 5 (five). Also the
135 north half (300 90-100 acres) of section No. 6 (six). Also the
following parcel of land in said section six (6) described by beginning at the northeast corner of the west half of the southwest quarter of said section (being the tract of land formerly owned by James Yanders and William A. Pratt) and running from said point due east one-fourth of a mile to centre of section, thence due south to the centre of the stream known as Partridge brook, thence following the centre of the channel of said brook to the boundary line of the west half of the southwest quarter of the said section; thence north to place of beginning; said tract containing about twenty acres more or less, being a portion of the north half of the northeast quarter of the southwest quarter of said section six (6), all in the township No. 47 (forty-seven) north of range No. twenty-six (26) containing 2,583 96-100 acres in the same. Also the west half of the northwest quarter (64 24-100 acres) of section six (6), township No. 47 (forty-seven) north of range No. 25 (twenty-five) west of meridian of Michigan containing according to U. S. survey 3,488 20-100 acres. All being in the county of Marquette, State of Michigan, being the same premises which were conveyed to said Pioneer Iron

Company by Charles T. Harvey by deed bearing date the 22nd day of April, 1857, recorded in the office of the register of Marquette county on the third day of July, 1857, at one o'clock p. m. in Liber B of Deeds on page- 385 and 6.

Also all that certain piece or parcel of land situate in the township of Teal Lake, county of Marquette and State of Michigan, known and described as follows, to-wit: Commencing at the center of section No. six (6) in township 47 (forty-seven) north, of range No. twenty-six west and running thence east 1,200 feet, thence south to the centre of the present channel of Partridge brook (so-called), thence westerly in the centre of the channel of said brook
136 to a point directly south of centre of the section, thence north to the first named point, viz: the centre of said section six. Said lands hereby conveyed being bounded in the west and north by lands now owned by the party of the second part and containing forty acres more or less, being the same premises which were conveyed to said Pioneer Iron Company by Charles T. Harvey and Sarah V. E., his wife, by deed bearing date the fifth day August, 1858, recorded in the office of register of Marquette county the fifth day of August, 1858, at 12 o'clock at noon in Liber B of Deeds on page 704.

And also all the northeast fractional quarter of the northeast fractional quarter and the northeast quarter of the southeast quarter of section two (2) in township forty-seven north of range twenty-six west containing seventy-six and 72-100 acres according to the returns of the surveyor general which were granted to said Pioneer Iron Company by letters patent under the great seal of said State of Michigan by the people thereof, said letters patent bearing date the sixth day of August, 1858, and which were recorded in the said office of register of Marquette county on the fifth day of October, 1858, in Liber B of Deeds on page 775.

And also all that piece or parcel of land situate in the county of Marquette and State of Michigan known and described as follows, to-wit: The southeast quarter of the northwest quarter of section one (1), in township forty-seven north of range twenty-six west in the district of land- subject to sale at U. S. land office at Marquette, Michigan, and containing 40 acres of land according to U. S. survey.

Being the same premises which were conveyed to said Pioneer Iron Company by Charles Johnson and Mary, his wife, by
137 deed bearing date the fourth day of October, 1858, recorded in the said office of register of said Marquette county on the 5th day of October, 1858, in Liber B of Deeds, on page 774.

Together with all and singular the buildings, fixture- and improvements of every nature upon or attached to said lands or any part thereof and also together with all and singular the rights, privileges, hereditaments and appurtenances thereto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold the above bargained lands, tenements, buildings, fixtures, improvements, rights, privileges, hereditaments and appurtenances unto the said parties of the second part, their heirs and assigns forever as joint tenants and not as tenants in common, in trust for the purposes in this indenture declared, and the said party of the first part for itself and its successors doth covenant and agree to and with the said parties of the second part, their heirs and assigns, to warrant and defend the said parties of the second part, their heirs and assigns, in the quiet and peaceable possession of the above mentioned lands and tenements with the appurtenances against the lawful claim or claims of all persons whomsoever, for ever hereafter.

And for the same consideration above mentioned, the said party of the first part, doth by these presents, bargain, sell, assign, and set over unto the said parties of the second part, the said personal property of the said party of the first part, of every name, nature and description, and whether in the State of Michigan, the State of New York or in any other place or places which is now owned by said party of the first part, or which may hereafter be owned by said party of the first part, during the continuance of this security
138 unperformed and unsatisfied in whole or in part, which personal property consists in chief of the following description of articles, but is not intended to be confined or limited by any specification, namely: All the engines, boilers, machinery, house and office furniture, tools, implements, live stock, agricultural products, supplies, provisions, goods, wares and merchandise, due iron ore, wood, charcoal, and other coal flux, and iron manufactured or to be manufactured from ore dug or to be dug, owned or to be owned by the said party of the first part during the life of this security and until it is fully satisfied as said party's of the first part works at Negaunee in said county of Marquette or at any other place or places whatever.

To have and to hold all and singular the said personal property unto the said parties of the second part and their executors, administrators and assigns forever in trust for the purposes in this instrument declared.

Provided always and this indenture is upon the express condition that if the said party of the first part shall within one year from the date of this instrument well and truly pay unto the said Tucker, the said Hoppock and the said Pearsall and the said subscribers to said fund, for cutting wood, all sums due as aforesaid for advances made, and all sums which may be advanced as aforesaid together with interest at the rate of seven per cent. per annum on all advances from their date, and shall also within the same period of one year from this date pay, satisfy and take up the said notes endorsed severally by said Tucker, Hoppock and Pearsall and all notes and other liabilities given to renew, replace, extend or secure the same or the indebtedness thereby created and within the same period pay to each of said last named parties any and all sums which he

may hereafter pay upon such original or substituted or other
139 papers or securities above referred to, and any and all costs, damages and expenses connected with or arising out of same, with interest at the rate of seven per cent. per annum upon all such sums and amounts and shall keep and perform promptly and faithfully all and singular the other provisions, covenants, conditions and agreements herein contained, then these presents shall cease and become null and void.

But in case any default shall be made in the performance of any covenant, condition, promise or agreement herein contained and to be kept and performed by said party of the first part, then it shall be lawful for said parties of the second part, their heirs, executors, administrators or assigns to take possession of said real estate with all and singular the fixtures, buildings and improvements thereon, and sell and dispose of same at public auction to the highest bidder according to the statutes now or hereafter to be in force in the State of Michigan, and on such sale to make or cause to be made all conveyances necessary to convey the property sold to the purchaser or purchasers thereof or in case they proceed in chancery they shall be entitled to obtain a receiver of said property of every description, real and personal, without delay and have the same managed according to their own best discretion so far as may be under the order of the court and all or any of them shall be eligible as receivers if the court shall see fit to appoint them. And upon such default said parties of the second part may assume possession in like manner of all and singular the personal property now owned or hereafter to be owned by said party of the first part and sell the same at public auction at such time or times and in such place or places and in such parcels as they deem best, giving at least six days' notice of any such public sale either by posting notices as required for constables' sales or by publication in some newspaper published in the county where such sale takes place.

140 And it is hereby expressly provided that the proceeds of all sales of real and personal property after deducting costs and expenses, shall be applied *pro rata* upon all of the several debts and liabilities herein provided for without any preferment or distinction whatsoever.

It is also further provided that the said party of the first part shall proceed and the said party of the first part hereby covenants to proceed with all diligence to reduce and convert into merchantable iron all ore now or hereafter to be on hand and to sell such iron without delay and apply the proceeds of such sales ratably to the payment of all the indebtedness secured by this instrument equally and impartially. And so long as said party of the first part shall continue within the space of one year ensuing the date of these presents to manufacture and sell such iron speedily and in good faith to apply the proceeds thereof as aforesaid, said party of the first part shall be at liberty to continue in possession of the personal and real

estate hereby conveyed and of any future acquisitions of personal property.

And said party of the first part doth hereby expressly covenant that it will, within one year from the date of these presents, pay unto each of the said named creditors, to wit, the said Tucker, the said Hoppock, and the said Pearsall, all and singular the aforesaid amounts hereinbefore acknowledged to have been advanced with interest at the rate of seven per cent. per annum from the date of each advance and will also within the same period repay unto each and every of said parties any and all sums which they or any of them may hereafter pay upon the said notes maturing hereafter or any notes or other liabilities growing out of or substituted for such hereafter maturing notes with the same rate of interest, and said party of the first part further covenants to pay within the
141 same period all sums advanced or to be advanced upon said subscription for procuring wood with interest at seven per cent. as aforesaid from the time of their respective advancements.

And said party of the first part further covenants to execute any renewal or renewals, successively in whole or in part of any or all of said notes maturing hereafter which either of said endorsers or any or all of them may desire; and also to use its efforts to obtain such renewals as may be necessary to save said endorsers from the necessity of making further advances to pay such notes.

And said party of the first part expressly covenants to pay such notes or their renewal thereof if renewed when the same become payable and without default.

And the said party of the first part further covenants to and with the said parties of the second part, their heirs, executors, administrators and assigns, that upon the happening of any default in the performance of any covenant, agreement or condition of this instrument, said party of the first part will peaceable and quietly deliver possession to said parties of the second part, their heirs, executors, administrators or assigns, of all and singular the real and personal property embraced in this instrument.

And also all personal property not now owned but which shall hereafter be owned by said party of the first part to be used and disposed of for the purposes of this instrument and the trusts hereby created.

And said party of the first part further covenants upon the request of said parties of the second part, their heirs, executors, administrators or assigns, to execute, acknowledge and deliver any and all further conveyances and assurances which they may deem necessary for the more completely assuring to them or either of them the right and title of any property set forth in this indenture and
142 hereby conveyed or intended so to be and also to execute any and all conveyances, assignments or chattel mortgages which may be necessary to cover any personal property the title of which is not now vested in said party of the first part.

In witness whereof, the said party of the first part has unto these

presents caused its corporate seal to be affixed with the signatures of its president and secretary, the day and year first above written.

[L. S. Pioneer Iron Company.]

WM. PEARSALL,
President P. I. Co.

[L. S. Pioneer Iron Company.]

JNO. NEILSON,
Secretary P. I. Co.

Signed, sealed, and delivered in the presence of—

SAMUEL J. W. BARRY.
WM. HART SMITH.

Duly acknowledged on the 19th day of December, 1859, before—

WILLIAM COX DUSENBURY,
Commissioner for the State of Michigan,
Residing in the City of New York.

Mr. HAYDEN: We object to that as irrelevant.

Judge BROWN:

61. William Pearsall to the Bank of Jersey City, an assignment of his interest in this mortgage, dated December 6, 1859; recorded March 9, 1860, Liber 1 of Mortgages, page 285.

Mr. HAYDEN: We object to this record of assignment, as also irrelevant.

Judge BROWN:

62. John C. Tucker, Moses A. Hoppock and the Bank of Jersey City, to the Iron Cliffs Company, assignment of mortgage.
143 Consideration named $44,160.60. Dated Aug. 2, 1869; recorded Aug. 11, 1869, Liber 2 of Mortgages, 557.

Mr. HAYDEN: That is objected to as above.

Judge BROWN:

63. Iron Cliffs Company to the Pioneer Iron Company, a release of this mortgage, dated May 14, 1887; recorded May 19, 1887, Liber 14 of Mortgages, page 82.

64. Jackson Iron Company to the Pioneer Iron Company, a 25-year contract for the purchase of ore, dated April 25, 1857; recorded March 8, 1875, Liber 2 of Miscellaneous Records, page 248.

Mr. HAYDEN: We object to these numbers 66 and 67, as irrelevant.

Agreement April 25, 1857, Between Jackson Iron Company and Pioneer Iron Company.

Whereas, The party of the second part *propose to erect and build a blast furnace establishment of one or two stacks for manufacturing* pig iron near the Jackson iron mine in Marquette county in said State of Michigan, and *whereas*, said Pioneer Iron Company desire to obtain iron ore for use in such furnace from the party of the first part from its iron location known as section one of township forty-seven (47) north of range twenty-seven (27) west in said county, and to pay for said ore the sum of one dollar ($1.00) per ton of pig iron made therefrom; and *whereas*, said party of the first part consents to furnish said ore for said furnace upon the terms herein mentioned; *Provided, however*, that said ore shall be obtained under the direction of the said party of the first part, or its officers or agents, and so as not to interfere with or embarrass in any way or manner the general mining operations of said company, its lessees or assigns. *Therefore*, the party of the first part agrees to furnish or allow to be dug or mined upon said iron location, iron ore
144 for such furnace and for use therein only (and not for sale) to the extent required for the same, to be taken as follows:

First. To take for use of said furnace all finely broken ore or chips from the mines being worked by the party of the first part, their lessees or assigns, being that ore or chips which may be rejected as not fit to ship on account of small size, and the party of the second part agrees to cast or remove away from said mines to said furnace such ore with all reasonable despatch, in order to relieve said mines from any accumulation thereof or to the extent at least, needed for such furnace.

Second. To dig or mine such hematite or rock ore as may be convenient and designated by the party of the first part in addition to said chips or finely broken ore before mentioned to the extent needed, and of good quality for use and constant working of said furnace. *Provided, however, and it is expressly understood*, that the ores for such furnace shall be obtained without interfering with, impeding or embarrassing the mining and carrying business of the party of the first part, its lessees or assigns, or their sales of ore to other parties, or their roads, side tracks, mining tracks, or otherwise, and said party of the first part shall be and remain sole judge of its own conveniences and wants in these respects. This proviso shall not, however, be so construed as to exempt or excuse the party of the first part from designating a place or places where ore for such furnace may be obtained by the party of the second part upon reasonable request, the same to be taken or mined by said party of the second part according to the terms of this agreement.

And the party of the second part agrees to take and obtain said ore as hereinbefore mentioned and to pay to said party of the first

part or its duly authorized officers or agents as a considera-
145 tion for said ore, so to be taken and obtained under the direction of the party of the first part, the sum of one dollar ($1.00) upon each and every ton of pig iron or metal made therefrom in said furnace, and for the purpose of facilitating the settlement of such accounts the party of the second part shall and will at the end of each month render to the party of the first part an accurate statement of the product of said furnace for the month preceding, and shall and will pay to said party of the first part quarter yearly the amount due for ore as hereinbefore mentioned, namely: on the first days of January, April, July and October in each year, and in case of an omission to pay for said ore quarter yearly, as provided for, within sixty days after same falls due, or other wilful violation of the terms of this agreement, this contract shall cease at the election of the party of the first part. This contract shall exist and be in force for the term of twenty-five (25) years from its date and no longer unless renewed.

And it is further agreed, that if said party of the second part shall fail to erect and put said furnace in operation within two (2) years from the date hereof, this contract shall cease to have any binding force or effect whatever. In case the party of the second part shall use in said furnace ore from other localities and desire a reduction in the rate of one dollar ($1.00) per ton made in the furnace as hereinbefore mentioned to be paid to the party of the first part upon written notice to that effect by the second party, this contract shall be annulled and the rates to be paid for ore thereafter shall be subject to a new contract upon such prices and terms as may be then agreed upon.

The provisions of this agreement shall apply to and bind both the parties of the first and second part, and their assigns in corporate succession.

146 Duly attested, signed, sealed and witnessed and acknowledged in the usual form, and recorded March 8, 1875, in Liber 2, Miscellaneous Records, page 248.

Mr. SHAULL: We offer in evidence that part of the legislative journal relating to the passage of a bill for reorganizing mining companies, being act 142 of the Session Laws of 1889. I desire to call attention to and to have appear upon the record, the certificate in the House Journal for the Michigan legislature of 1889, as follows:

"HOUSE OF REPRESENTATIVES,
LANSING, MICH., *July* 3, 1889.

I hereby certify that the foregoing is a correct journal of the proceedings of the house of representatives of the legislature of Michigan for the year 1889.

DANIEL L. CROSSMAN,
Clerk of House of Representatives."

Also, the certificate in the Senate Journal, No. 2, of the Michigan legislature for 1889:

"SENATE CHAMBER, LANSING, MICH., *July* 3, 1889.

"I hereby certify that the foregoing is a correct journal of the proceedings of the senate and of the executive sessions of the legislature of the State of Michigan for the regular biennial session of the year 1889."

Mr. HAYDEN: What book are you reading from?

Mr. SHAULL: From the Senate Journal.

COURT: The Senate and House Journals, I understand, are both offered.

Judge BROWN: So far as relates to the passage of the bill for re-organizing mining companies.

Mr. SHAULL: These are offered in so far as they relate to senate bill No. 398, file 159, afterwards act 142 of the Session Laws of 1889.

I call attention to Senate Journal, on pages 305 and 306, under date of Feb. 6, 1889, as follows:

147 "Mr. Dunstan, previous notice having been given, and leave being granted, introduced senate bill No. 398, entitled A bill to provide for the re-organization of mining and smelting corporations, the terms of the existence of which has expired by limitation. The bill was read a first and second time by its title, and pending its reference Mr. Dunstan,—on motion of Mr. Dunstan the bill was laid on the table."

Also under date of May 10, 1889, page 853, of the Senate Journal, in so far as to show the following:

"By unanimous consent Mr. Dunstan moved to take from the table senate bill No. 398, entitled (setting forth the title), which motion prevailed. On motion of Mr. Dunstan the bill was referred to the committee on judiciary."

Under date of May 14, 1889, I offer that part of the Senate Journal, page 869, so far as to show the following:

"*Reports of Standing Committees.*

"Report of judiciary committee that they have had the bill under consideration, and report the same back to the senate with accompanying substitute therefor, entitled, A bill to provide for the re-organization of corporations for mining, smelting and manufacturing iron, copper, silver, mineral coal and other ores or minerals, the term of existence of which has heretofore expired or may hereafter expire by limitation, and to fix the duties and liabilities of such renewed corporations. And recommend that the substitute be concurred in and that the substitute do pass. Report accepted. On motion of Mr. Palmer, the senate concurred in the adoption of the substitute, and ordered the bill printed and referred to the committee of the whole, and placed on the general order."

Under date of May 22, 1889, I offer that part of pages 945 and 946 of Senate Journal which substantially reads as follows:

"*Third Reading of Bills.*

"Mr. Dunstan moved that the committee of the whole be
148 discharged from the further consideration of senate bill No. 398 entitled, etc. (setting out title) which motion prevailed. On motion of Mr. Dunstan the rules were suspended by a two-thirds vote and the bill was placed on its immediate passage. The bill was read a third time, and pending taking the vote thereon, Mr. Dunstan, by unanimous consent, moved certain amendments to the bill, which motion prevailed, and the bill was so amended. The bill as amended was then passed, the majority of all the senators elect voting therefor. The yeas and nays were as follows: Yeas, 17; nays none."

I have not set out the names of the senators.

Under date of May 23, 1889, I call attention to that part of House Journal, upon page 1714, reading as follows:

"*Message from the Senate.*

"This is a message from the senate, giving the number and title of the bill, and reporting that the same had passed the senate by a majority vote of all the senators elect, has been by a two-thirds vote ordered to be given immediate effect, in which the concurrence of the house is asked; and the bill was read a first and second time and referred to the committee on mines and minerals.

"Under date of May 24, 1889, that part of page 1739 of the House Journal, upon the following subject; report of standing committees. The report of the committee on mines and minerals, giving number and title of the bill 'that they have had the same under consideration, and report the same back to the house, with amendments thereto, and recommend that the amendments be concurred in and that the bill as amended *to* pass. Report accepted. The bill was ordered printed and referred to the committee of the whole and placed on the general order.'

"Under date of June 4, 1889, that part of the House Journal found on page 1810, referring to the following subject of general order; the bill considered in committee of the whole, etc., and 'report the bill back to the house without amendment thereto,
149 and recommend its passage. Report accepted and bill placed on the order of third reading.'"

Under date of June 5, 1889, that part of journal of the house found on page 1829, upon that subject as follows:

"On motion of Mr. Southwick the order of third reading was discharged from the further consideration of senate bill No. 398 (giving the title) and the bill was referred to the committee on mines and minerals."

Under date of June 7, 1889, I offer that part of the House Journa. on page 1853, upon the following subject:

"*Report of Standing Committees.*

"Report by the committee on mines and minerals (giving number and title of bill) was under discussion, setting forth that they have had the same under consideration and report it back to the house with amendments thereto, and recommend that the amendments be concurred in, and the bill when so amended be passed. Report accepted. On motion the house concurred in the amendments, and the rules being suspended by a vote of two-thirds of the members present, the bill was put upon its immediate passage. The bill was then read a third time and passed, a majority of all the members elect voting therefor. Yeas and nays as follows: Yeas, 65; nays, 1.

"Title agreed to; on motion, by vote of two-thirds of the members elect, the bill was ordered to take immediate effect."

From the Senate Journal we offer, under date of June 7, 1889, that part having reference to the messages from the house, giving the number and title of the bill; that it was under discussion and setting forth certain amendments made thereto, providing that no corporations, except corporations organized to carry on business in the counties of Houghton, Keweenaw and Ontonagon, shall be permitted to reorganize hereunder which for the past ten years have
150 ceased to carry on the business for which they were organized; and setting forth the fact of the passage of the bill as thus amended, by a majority vote of all the members-elect, and that the same had been ordered by a two-thirds vote to take immediate effect.

The question being on concurring in the amendment made by the house to the bill, on motion of Mr. Dunstan, the senate concurred in the amendment; and a majority of all the senators-elect voted therefor, by yeas and nays, as follows: Yeas, 17; nays, none. Bill referred to committee on engrossment and enrollment.

On page 1090, in Senate Journal, report of standing committees, the committee on engrossment and enrollment report that it has correctly enrolled and presented to the governor senate bill No. 398, and giving the title thereof; and the report was accepted and the committee discharged.

Under date of June 10, 1889, Senate Journal, page 1091, under the head of messages from the governor:

Messages from the governor setting forth that he had upon the 8th day of June approved, signed and deposited in the office of the secretary of state, senate bill No. 398, and giving the full and correct title thereof.

Signed by C. J. Luce, governor.

Message was laid on the table.

Mr. PENNINGTON: We would like to reserve the privilege of introducing, if we deem it better to do so, the joint resolutions for the amendment of the constitution, of the same session.

CHARLES KELSEY, sworn on part of the complainants, testified as follows:

Direct examination by Judge BROWN:

I am the judge of probate of Marquette county. I have here the files, the file case containing the files of the estate of Edward Breitung, deceased.

151 Judge BROWN: We offer these files and the journal of this probate court in evidence. These files and journal show that Edward Breitung died intestate.

M. M. DUNCAN, sworn on the part of the complainants, testified as follows:

Direct examination by Judge BROWN:

I reside at Ishpeming; have resided there a little over four years. I am agent of the Iron Cliffs Mining Company. I am agent for the Pioneer Company; have been such agent since the 19th of December, 1899. I am also the agent of the Cleveland Cliffs Company; have been its agent for four years. These companies have an office in Ishpeming in my charge. It has been in my charge since I have been there, four years. They have also a business office in Negaunee. There are two separate departments of all the companies. The one at Negaunee is the land department.

There has not been a list of stockholders of the Pioneer Iron Company kept in our office. I have never seen one filed there. I suppose I would be apt to know if there was. I recognize the signature of the communication dated Ishpeming, Mich., January 9, 1900, which you show me. It is mine.

Judge BROWN: I offer this in evidence, and wish to read it.

(EXHIBIT G.)

Paper is as follows:

"ISHPEMING, MICH., *January* 9, 1900.

"To the Negaunee Iron Company and Edward N. Breitung:

"Please take notice that the undersigned Pioneer Iron Com-
152 pany has entered upon the following described lands, situated in the city of Negaunee, county of Marquette and State of Michigan, to-wit: The east half of the southwest quarter (E. ½ of S. W. ¼) and the south half of the southeast quarter (S. ½ of S. E. ¼) of section six (6); the north half of the northeast quarter (N. ½ of N. E. ¼) of section seven (7); the northwest quarter of the northwest quarter (N. W. ¼ of N. W. ¼) of section eight (8), township 47 north of range 26 west, for the purpose of exploring for iron ore to be used in the furnaces

of the undersigned in said county, according to the grant made to the undersigned in the lease executed to the undersigned by Charles T. Harvey on the 17th of September, A. D. 1857.

"Yours truly, PIONEER IRON COMPANY,
"By M. M. DUNCAN, *Agent.*"

That is my signature to the communication dated January 12, 1900, which you show me.

(Paper offered in evidence marked Exhibit H.)

Judge BROWN: This is the same, to the same effect and mentions other lands in addition; same heading and address to the Negaunee Iron Company and Edward N. Breitung.

"GENTLEMEN: In addition to the other lands occupied by us under the terms of a certain lease, of which you have heretofore had notice, we are also occupying under said lease the southwest quarter (S. W. ¼) of section eight (8) and the south half (S. ½) of section seven (7), both in township 47 north of range 26 west.

"Yours truly, PIONEER IRON COMPANY,
"By M. M. DUNCAN, *Agent.*"

(Paper marked Exhibit H.)

That is my signature to the paper which you show me.

Judge BROWN: This paper reads as follows:

"ISHPEMING, MICH., *January* 15, 1900.

"To the Negaunee Iron Co. and Edward N. Breitung:

153 "Please take notice that the undersigned Pioneer Iron Company has entered upon the following described lands, situated in the city of Negaunee, county of Marquette and State of Michigan, to-wit:

"The northeast quarter of the northwest quarter (N. E. ¼ of N. W. ¼) of section eight (8) and the south half of the northwest quarter (S. ½ of N. W. ¼) of section eight (8), town 47 north of range 26 west, for the purpose of exploring for iron ore, to be used in the furnaces of the undersigned in said county, according to the grant made to the undersigned by Charles T. Harvey on the 17th of September, A. D. 1857.

"Yours truly, PIONEER IRON COMPANY,
"By M. M. DUNCAN, *Agent.*"

(Paper marked Exhibit I.)

I sent this communication under the direction of the then president of the company, Mr. Mather. I had no other instructions then from Mr. Mather; those instructions were in writing. I am not able to produce them. I think I sent a letter to these same parties

under date of January 12, 1901. I guess that is it. I could not tell you from recollection whether that notice covers the lands referred to in this. Everything that was done was done under Mr. Mather's instructions. These notices were sent under his instructions.

We keep books of all our operations of all the companies in our office. The books we have in our office relating to the business of the Pioneer Iron Company go back only as far as when we began our operations, which was in December, after the date of December 19, 1899, after I was appointed agent. I have no books in that office relating to the affairs of the Pioneer Iron Company prior to December, 1899. I have no knowledge of the whereabouts of the books of the Pioneer Iron Company.

154 Cross-examination by Mr. HAYDEN:

I mean that I went onto these lands by the direction of the president of the Pioneer Iron Company, Mr. Mather.

Q. Did you do any work on these lands whatever except for the Pioneer Iron Company?

A. I did not.

Mr. SHAULL: I move to strike that out, on the ground that it is a conclusion of law.

The Pioneer Iron Company paid the expenses. I have no books in the office prior to my appointment as agent, which was in 1899, in the month of December. Prior to that time the affairs of the Pioneer Iron Company in this county were conducted at Negaunee.

I have had charge of all the operations on these lands in question since they were commenced in December. No other company or concern or person whatever has been doing any of this work of which complaint is made, except the Pioneer Iron Company. If anybody else has been there, I don't know.

When I went on these lands there was absolutely nothing there in the way of mining improvements. The lands were barren, except this field used as a farm. There were some fields, tilled fields. They were very small, I don't know how many acres, but very small. I should say 40 or 50 acres would cover the amount of tilled ground on all the tracts we entered. I am unable to state how many acres of tilled ground altogether on all these lands.

The Pioneer Iron Company has not interfered with any of these tilled lands in its operation, and except these tilled lands there were no other improvements, no other operations of any kind were being carried on upon the lands. They were, for the most part, barren and absolutely wild lands.

155 In relation to these notices I gave the Negaunee Iron Company and Edward Breitung, my recollection is that I subsequently received this notice you show me, dated January 9th, 1900, in reply to my notice. I think I have a copy of that.

Mr. HAYDEN: I offer this in evidence.
(Marked Defendant's Exhibit 1.)

"To the Pioneer Iron Company, Negaunee, Michigan.

"GENTLEMEN: We are in receipt of a notice dated Jan. 9, 1900, signed by the Pioneer Iron Company, by M. M. Duncan, agent, stating that the Pioneer Iron Company has entered upon the east half of the southwest quarter and the south half of the southeast quarter of section 6, the north half of the northeast quarter of section 7, and the northwest quarter of the northwest quarter of section 8, in township 47 north of range 26 west, for the purpose of exploring for iron ore to be used in the furnaces of your company, under a certain lease executed by Charles T. Harvey on the 17th day of September, A. D. 1857.

"We beg to advise you that we deny that the Pioneer Iron Company has any rights whatever in any of the lands described in your notice or in the said lease, by virtue of the said lease, or in any other way. We have already notified you at both Cleveland and Negaunee to this effect. We forbid your exploring upon said lands; demand that you remove from the same, if you have already entered as you state, and give you notice that if you do not do so we shall resort to the courts for relief from your unwarranted trespasses upon our lands.

"Marquette, Mich., Jan. 12, 1900.

"NEGAUNEE IRON COMPANY,
"EDWARD N. BREITUNG,
"MARY KAUFMAN,
"By A. B. ELDREDGE,
"*Their Attorney in Fact.*"

That particular paper, dated also January 9, 1900, and directed to the Pioneer Iron Company, I did not receive. That was
156 addressed to Negaunee. I never had that; that came to some other office, the Negaunee office. I never received one like that to my knowledge.

Mr. HAYDEN: Will you admit that that was sent to the Pioneer Iron Company?

Mr. SHAULL: Yes, it is admitted.
(Paper offered in evidence and marked Exhibit 2.)

"To the Pioneer Iron Company, Negaunee, Michigan.

"GENTLEMEN: We are advised by articles in the public press that you have or are about to enter upon the lands owned by us in sections 6, 7 and 8 of township 47 north of range 26 west for the purpose of mining iron ore under a certain alleged lease for ninety-nine years.

"We desire to notify you that we deny the validity of such lease, and the right of the Pioneer Iron Company, or any one else, to enter

upon the said lands and remove iron ore therefrom. We give you this notice that there may be no question of our position in the matter, and advise you that if you persist in trespassing upon our lands we shall be obliged to seek recourse in the courts.

"Marquette, Mich., Jan. 9, 1900.

"NEGAUNEE IRON COMPANY,
"By N. M. KAUFMAN, *Sec'y.*
"EDWARD N. BREITUNG,
"By A. B. ELDREDGE,
"*His Attorney in Fact.*
"MARY KAUFMAN,
"By A. B. ELDREDGE,
"*Her Attorney in Fact.*"

Mr. HAYDEN:

Q. How much has the Pioneer Iron Company spent in these explorations?

Mr. SHAULL: I object to that as incompetent and immaterial.

A. We have spent, up to the first of March, a little more than $42,000.

By we, I mean the Pioneer Company. The Pioneer Iron
157 Company had furnaces in Marquette county at the time we commenced these explorations. They were located at Carp river. I don't know when they acquired the Excelsior furnace at Ishpeming.

Judge BROWN: I object to that as immaterial.

They had at the time the furnace at Carp river, Marquette. The Carp River furnace was then being operated in the manufacture of pig iron. I cannot tell you just when they did begin operations there.

Re-direct examination by Judge BROWN:

I am unable to say who had charge of the mining department prior to my appointment as agent. I am unable to say, but I think Mr. Redfern had charge of it. I don't know who kept the books of the mining department. I could not tell you whether Mr. Redfern kept any books in relation to the mining department at Negaunee.

We had already made an entry upon these lands at the date of the first notice we sent there. On the 26th of December. I think the date of the first notice is January 9, 1900. My recollection is that from the time of entry up to the time of sending the first notice, we spent on these lands in the neighborhood of $2,000. That money was expended for labor and material, supplies of all kinds; material for the necessary houses for the men, the timber for shafts. I think these houses were about 12 feet square, something of that sort. The houses were built upon the land. I never heard of an office on

runners over on the New York hematite. None of those houses were moved on there in the night time. They were all moved in the day time. I do not think this, I know it.

When we went upon the lands, there were one or two abandoned shafts. We reopened one of them. We made a number of new ones. I cannot state the exact number. Have been engaged
158 in the same work ever since we entered upon the lands in December.

COURT: It has been exploratory work altogether, I suppose?

A. Yes, sir.

Judge BROWN: You have been engaged in that ever since?

A. We have. Yes.

SAMUEL REDFERN, sworn on the part of the complainant, testified as follows:

Direct examination by Judge BROWN:

I reside at Negaunee. I am in the employ of the Cleveland Cliffs Company and other companies; the Cleveland Iron Mining Company, the Iron Cliffs Company, Pioneer Iron Company, Michigamme Company and American Iron Mining Company. I am land agent. I have nothing to do with other mining operations. I have had to some extent, some years ago; seven or eight years ago.

The Pioneer Iron Company had an agent in charge of its mining operations prior to the appointment of Mr. Duncan. It had an agent at Negaunee, looking after its mining interests. That was ten years ago. I was not the agent of the company, but Mr. Maitland was. He had an office at Negaunee. I have seen the books of the Pioneer Iron Company in his office very often while he was acting as agent. These were books of various kinds, to show the transactions.

Q. Did you ever see a record of the proceedings of the stockholders in Mr. Maitland's office?

A. I don't remember; I think possibly I have, too.

Q. When was that?

A. I think some few years ago I saw a book there.

Q. What was that book?

A. I think it was an annual report.
159 Q. An annual report you saw?

A. A published report.

Q. Did you see any records kept by the secretary of the company, either of the stockholders or directors?

A. I don't remember that I did.

Q. Have you ever seen any such book?

A. I don't remember.

Mr. HAYDEN: They are not kept there, Judge Brown.

Judge BROWN:

Q. Your counsel says they are not kept there at Negaunee. Do you know where those books were kept?

A. I know where the other offices have been.

Q. You speak of their having books; have they any there except such as relate to the lands?

A. Well, I have seen accounts of all kinds in the books.

Q. In what books?

A. In the books kept in the office.

—. Whose books were they—Iron Cliff books?

A. Well, I don't know whether they were Iron Cliff books.

Q. Were they Cleveland Cliff books?

A. I don't know; I could not designate them in that way.

Q. Who was the bookkeeper? Who had charge of the books to which you refer?

A. Mr. Maitland.

Q. Did you know a man by the name of Gibbs—Mailan Gibbs?

A. Yes, sir.

Q. Was not Mr. Gibbs manager from 1889 down to 1894?

A. No, sir.

Q. Did he have charge of the books?

A. He was the bookkeeper.

Q. Did he have charge of all the books?

A. I don't know whether he kept all the books. He had other clerks there.

Mr. HAYDEN: General manager, did you say?

Judge BROWN: Yes, there at Negaunee.

Q. Was he agent of the company?

A. Yes, I think that was his title.

Q. Of what company?

A. All the companies.

160 Q. Do you know whether he was agent for the Pioneer Iron Company or not?

A. Yes.

Q. Had he not been the general bookkeeper for many years before that?

A. Yes.

Q. What, if any, books of account did the Pioneer Iron Company have there?

A. They had books showing the operations of the different business.

Q. Where and when was that?

A. The operation of the furnaces, and so on.

Q. That was in Mr. Gibbs' time?

A. Yes, he was there part of the time.

Q. Don't you know, as a matter of fact, that the Pioneer Iron Company was not operating the furnace any of that time?

A. No, sir, I do not.

Q. What books are there now belonging to the Pioneer Iron Company?

A. Well, at present all the operations carried on are relating to the land.

Q. When were those books removed?

A. They were not removed, as I am aware.

Q. You say relating to the land; what do you mean by that?

A. To my department; the land department.

Q. When were the books relating to the accounts removed?

A. I am not aware that they were removed. But the books and papers are being transferred backwards and forwards all the time.

Q. Are they in your office now?

A. There are books there now, yes, sir.

Q. What books?

A. Well, I can only speak of those that are in my own use at the present time.

Q. Have you none there than those in your use at the present time?

A. Oh, I presume there are others.

Q. Do you know anything about it?

A. Oh, I know there are lots of books.

Q. Books of the Pioneer Iron Company, I mean?

A. Yes.

161 Q. State what they are?

COURT: The witness has just stated that he only knows about the books in his own department.

A. The books I am acquainted with, that I can tell you best about, are those of my own department. Any other books are old books. They do not concern me at the present time.

Q. What do those old books relate to?

Mr. HOYT: It is understood that all this testimony comes in under our objections, isn't it? Or does your honor expect us to object each time?

COURT: I think you ought to object.

Mr. HOYT: Then we object to this testimony as incompetent and immaterial.

Judge BROWN:

Q. Do you say there are any account books at all in your office belonging to the Pioneer Iron Company?

Mr. HOYT: We object to that as incompetent.

A. I think there are.

Judge BROWN: Will you produce these books in court?

A. I could produce some books in court, yes.

Q. What books will you produce?

A. There are quite a large number of books there.

Q. I ask you to produce any books of account showing business transactions of the Pioneer Iron Company in your office prior to June 9, 1889, to 1894; or prior to 1889.

Mr. HAYDEN: You mean books at any time prior to 1889?
Judge BROWN: Yes.
Mr. HAYDEN: We object to that as incompetent and immaterial.

Judge BROWN:

Q. Will you do that?
A. Yes, if it is proper to do so. I have no objection, anything I can find there.
162 Q. Bring them in to-morrow morning, then?
A. Of course I am afraid you are asking me for a good deal; I perhaps cannot bring them down, there are so many.
Q. Any books containing accounts of operations of the Pioneer Iron Company?
A. Well, I will do what I can if you wish me to, if I can find them.
Q. Between 1886 and 1889?
A. Yes, sir.

Cross-examination.

Mr. HAYDEN:

Q. Mr. Redfern, were those mining operations of the Pioneer Iron Company that you refer to conducted in 1886 or 1887?
A. I would not like to place the year. I know it was quite a long time ago. It would be about that time. I was just thinking of something to compare it with, and I know that it was about that time.
Q. Mr. Maitland was there managing the company at that time?
A. Yes, sir.
Q. Those operations were conducted by Mr. Maitland as manager for the Pioneer Iron Company?
A. Yes, sir.
Q. Who made the Pioneer Iron Company's contracts?
A. Mr. Maitland.
Q. When did the Pioneer contracts close?
A. I think in 1894.
Q. The furnace was old and worn out, wasn't it, at that time?
A. Yes, pretty well.
Q. And was it not also, practically, within any limit of cost of the business of making iron, an impossibility to get charcoal at that place for the furnace operations?

Mr. SHAULL: That is objected to as immaterial.

A. Yes, it ceased to be advisable to run a furnace there.
Q. Wasn't that why the Pioneer Iron Company did cease to operate in 1894, because it was impracticable to get charcoal.
A. Yes, that was the principal reason.
163 Q. At that time you had to go so far away to get charcoal and bring it on the railroads that the cost was so great that it

could not be produced there any longer, you had to go so far away for timber?

A. Yes, I know that.

Q. That was true?

A. Yes, that was true.

Q. That was the reason for stopping the furnace in 1894?

A. Yes, sir.

Q. Wasn't the iron made there, until you stopped, marked "Pioneer Iron Company iron"?

A. I cannot say what it was marked.

Q. Were not the pigs of metal produced marked "Pioneer Iron Company"?

A. I think they were marked "Pioneer Iron Company."

Re-direct examination by Mr. SHAULL:

Q. When did the Cleveland Cliffs Company quit making iron in the Pioneer furnace at Negaunee?

Mr. HOYT: I object to that; in the first place, the question is leading, and in the next place it is incompetent.

Mr. SHAULL: I will ask you whether you know of the Iron Cliffs Company having made pig iron in that furnace?

A. Well, all I know of, I know from the old contracts, but it was before my time. I am not aware of the fact that the iron was put on the market as the Iron Cliffs Company Pioneer brand of pig iron.

Q. Didn't your furnace at Gladstone take up that brand and use it after the old Pioneer furnace at Negaunee went out of existence, and is not it using it now?

Mr. HAYDEN: We object to that as incompetent and leading.

Q. As a matter of fact, didn't the Iron Cliffs Company or
164 the Cleveland Cliffs Company ship the machinery from the old Pioneer furnace to Gladstone in 1894 or thereabouts?

Mr. HAYDEN: That is objected to as immaterial and incompetent.

A. There was machinery shipped to Gladstone.

Q. As a matter of fact, did not your company sell the material to various persons around Negaunee from the old Pioneer furnace and bill it to them as Iron Cliffs Company and receive payment as the Iron Cliffs Company for it?

Mr. HOYT: The same objection is continued. It is incompetent and immaterial.

A. It might be possible. We do not have a separate form for every transaction we have had. We use anything at all that we have, because it does not make any difference to us. Prior to 1899 there were several forms in the office that were headed "Pioneer

Iron Company," besides land contracts and contracts relating to land and leases of land; I think things relating to the operations of the furnace during the time the furnace was being run. Perhaps I have such forms in my possession. I was connected with the bookkeeping department of the companies at Negaunee prior to 1899. I think I am head of the bookkeeping department. I am not the bookkeeper, but I think I have charge of the books. I think it must be six or seven years prior to 1899 I have had the whole charge, and before that I had something to do with some portions of the books.

Mr. Gibbs was not the general agent until 1894; he was not the general agent at all. I think his title was agent of the furnace or a portion of the furnace business. About 1894, or before that time, I was superintendent of lands and fuel.

Q. Whom did your present superintendent at the furnace at Gladstone supersede?

165 Mr. HOYT: I object to that question as incompetent and immaterial.

Mr. SHAULL:

Q. Who was at the head of the department before he took charge?

Mr. HOYT: Same objection continued.

A. Mr. Gibbs and myself.

Mr. Gibbs didn't have charge of the entire business, except that of which I had charge.

Q. Aside from the land and fuel, Mr. Gibbs had the general charge of the operations of the Iron Cliffs Company, did he not, and other companies?

A. He didn't have—my position as superintendent of lands and fuel carried me to the extent of the operations to a certain extent.

At the time Mr. Gibbs had his position there, there was no one but he and I. I don't know what position Mr. Farrell occupied. Mr. Mills had some charge of the business of the Pioneer Iron Company in Michigan. I don't know to what extent. His office would be at Ishpeming.

Q. Was there a list of stockholders of the Pioneer Iron Company kept in your office?

Mr. HOYT: We object to that.

A. I don't know. I don't know of such a list being kept. I don't remember seeing it, that is all.

Re-cross examination by Mr. HAYDEN:

The Pioneer Iron Company paid the taxes of the Pioneer Iron Company. I have generally done the business at the time it was my business to do so, I have done that. Paying the taxes has been

directly under my control about six years. I have had control of all the papers, old tax receipts of the Pioneer Iron Company and the papers pertaining to these lands and property. The bundle of tax receipts you show me were produced from the Pioneer
166 Iron Company files at Negaunee. I produced these from the Pioneer Iron Company files. They were there on file; some of them I paid myself.

Q. I show you a tax receipt dated Jan. 26, 1872, for the taxes of 1871, and the receipt is headed "Received from the Pioneer Iron Company," and dated below; one for $254.25, another for $181.25, another for $2.50, another $1.00; and ask you if these receipts were for the Pioneer Iron Company taxes paid—these receipts for the Pioneer Iron Company were for taxes paid?

Mr. SHAULL: I object to that.

A. I got this from the papers in the office.

COURT: Do they purport to be receipts to the Pioneer Iron Company?

A. Yes, sir.

Mr. HAYDEN: They are printed on regular blank forms of land receipts of the treasurer, running to the Pioneer Iron Company. I offer this in evidence. These two dated Jan. 26, 1872, I offer in evidence.

Mr. ELDREDGE: They are objected to as incompetent and immaterial, because it is not shown that they were paid by the Pioneer Iron Company and not by the Cleveland Cliffs Company, and that there is no other proper evidence that they were paid and no proof of signature at all; and this witness was not in the employ of the company at the time and didn't pay them himself. We make the same objection to all of them.

(Papers marked Exhibits 3 and 4.)

Mr. HAYDEN:

Q. I show you some tax receipts from the treasurer's office dated December 31, 1892, marked "Correct, Samuel Redfern," for the taxes of the Pioneer Iron Company of 1892, all those running to the Pioneer Iron Company, 15, and ask you if you can identify
167 by the marks on them whether you paid those taxes yourself or not, and if so, for whom you paid them?

A. I didn't pay this money over myself.

I certified to their correctness; it was a receipt for the Pioneer Iron Company. They were obtained from the same files as the other, the Pioneer files kept in the office. I certified these in the regular course of my business there. I kept track of the lands at that time, and saw that it was correct and that we should pay this money. It was my business to see that it was correct for the Pioneer Iron Company to pay the taxes, or the proper company, whatever it may be.

Mr. HAYDEN: These are the treasurer's usual form of receipt, we offer them in evidence.

Mr. ELDREDGE: They are objected to for the reason that the witness did not pay them himself; that the receipts do not prove themselves and it is not shown by whom they were, as a matter of fact, paid.

Mr. HAYDEN:

Q. Don't you know, Mr. Redfern, that the Pioneer Iron Company did pay these taxes?

A. Yes, sir.

Q. You know that yourself?

A. Oh, yes.

Mr. HAYDEN: Now all of these, except this fifth one, I offer in evidence.

(Marked Exhibit 5.)

Q. I show you tax receipts running to the Pioneer Iron Company dated December 30, 1891, Pioneer Iron Company, and Pioneer and Arctic, some of them being for joint lands and some of them being for lands of the Pioneer Iron Company alone; all of these tax receipts being signed by the treasurer or deputy treasurer and all of them running either to the Pioneer Iron Company alone or to the Pioneer Iron Company and Arctic Company, and ask you
168 —they are also marked "Correct, Samuel Redfern"—I ask you if you can testify to these, the same as you testified to the receipts last preceding?

A. Yes, sir.

Mr. HAYDEN: I offer these also; they are in two parcels.

(Marked Exhibits 6 and 7.)

Mr. ELDREDGE: We make the same objection as with reference to prior tax receipts, with reference to all receipts we make the same objection.

With reference to these receipts running to the Pioneer and Arctic Iron Companies jointly, the Pioneer Iron Company paid its own share and the Arctic Iron Company its own share of those taxes. The Pioneer Iron Company on these receipts running to its land paid the taxes of the land. Those running to the two jointly were paid jointly by the two. We each paid our half; ½ that was our share. I know that the tax receipts upon the same forms, running to the Pioneer Iron Company for taxes of the year 1890, and dated December 31, 1890, being taxes in the city of Negaunee, were paid, but I didn't certify to them at the time.

COURT:

Q. Do you know the signature of the officer who purports to receipt for them?

A. Yes, sir, I know that; I know that well. It is Mr. Yates' writing.

Mr. HOYT:

Q. Do you know the handwriting on all these receipts?

A. Yes, sir.

I know it is the receipt of the treasurer in each case, except the first one; I don't know that; it is too far back.

Q. Here is another receipt for the some year on some other lands of the Pioneer Iron Company and dated December —, for taxes of the same year, taxes of the Pioneer Iron Company.

A. I know the taxes were paid. Of course I cannot say as
169 to that signature, Mr. Barnum, but I know the taxes were paid, because I kept track of them afterwards.

These are also from the files; I identify them as from the files in my office in each case.

Mr. ELDREDGE: We object to them upon the ground that it is not shown that they were paid by the Pioneer Iron Company and that the witness does not know who they were paid by.

Those receipts you show me running to the Pioneer Iron Company for the taxes of 1894, receipts dated in each case January 8, 1895, are the receipts of the Pioneer Iron Company, and in the way I have testified before. These are the same as the others, except that I paid these myself. The Pioneer Iron Company paid those taxes.

(Receipts offered in evidence and marked Exhibit 8.)

I testify the same as to these receipts running to the Pioneer and Arctic, which you show me, as to the former receipts, some running to the Pioneer alone and some running to the Pioneer and Arctic. As to the Pioneer taxes, the Pioneer paid these taxes itself, and as to the two companies each paid its half. As to those receipts you show me, running some to the Pioneer and Arctic, some to the Arctic alone, dated Jan. 9, 1896, for the taxes of 1895; these are the tax receipts of the Pioneer Iron Company and the Pioneer Iron Co. paid them. I pay them myself.

Mr. HAYDEN: I offer these in evidence.

Mr. ELDREDGE: They are objected to as incompetent and immaterial.

(Marked Exhibit 10.)

Mr. HAYDEN:

Q. I find here the Pioneer and Arctic receipts for 1893, but I don't find the Pioneer, did you find all the receipts for every year?

A. No. You didn't give me time enough to find them for
170 that particular year. There was a dispute and suit in the courts and we didn't get tax receipts, we paid the taxes

though. The receipts for the Pioneer and Arctic for the year 1893, dated February 24, 1894, I paid; the same as the other joint Pioneer and Arctic taxes, the taxes upon joint lands.

Mr. HAYDEN: I offer these in evidence.

Mr. ELDREDGE: They are objected to as incompetent and immaterial.

(Paper marked Exhibit 11.)

As to the tax receipts which you show me, running to the Pioneer Iron Co. for the taxes of 1889, dated December 39, 1889, all in one bundle, some of them running to the Pioneer and Arctic jointly, or one of them, I testify the same as to the other, except that they were approved by Mr. Maitland, but I know the signature of the treasurer. I know that the taxes were paid upon one, which you show me, Pioneer and Arctic lands in Negaunee tp. for the same year.

Mr. HAYDEN: I offer these in evidence.

Mr. ELDREDGE: They are objected to as incompetent and immaterial. I make the objection to these receipts and all that has been offered generally as incompetent and immaterial.

(Papers marked 12 and 13.)

Mr. HAYDEN: I show you another receipt running to the Pioneer Iron Co. and others, it seems to be the Arctic, in the division of the taxes below. Can you say the same as to that?

A. Yes sir, I know that signature, that was paid and I know the signature.

Mr. HAYDEN: I offer this in evidence.

Mr. ELDREDGE: It is objected to as incompetent and immaterial.

(Paper marked Exhibit 14.)

COURT: You know that the Pioneer Iron Co. paid its share of it?

A. Yes, sir.

Mr. HAYDEN: I show you receipts running to the Pioneer
171 Iron Co. for the taxes of 1887, receipts being dated December 30, 1887, all these running to the Pioneer Iron Co., and ask if you recognize them and can testify to it, the same as to the others?

A. No, that was before my time—well, no, it wasn't before my time, but I didn't have anything to do with that particular one.

COURT: Do you recognize the signature of the treasurer?

A. I wouldn't be sure as to that, while I recognize Mr. Maitland's signature there.

Mr. HAYDEN:

Q. Were these recepts in the Pioneer Co.'s files in the office?

A. Yes, sir.

Q. And were in your charge since you have had charge of the office?

A. Yes, sir.
Q. You brought them to me with the others, did you?
A. Yes, sir.

Mr. HAYDEN: I offer these in evidence.
Mr. ELDREDGE: They are objected to as incompetent and irrelevant and immaterial, and not properly proved so as to be admissible in evidence.
(Paper marked Exhibit 15.)

The tax receipts running to the Pioneer Iron Co. for the year 1886, and bearing date December 30, 1886, are the same as the last. I don't know the signature, but I know the taxes were paid. I don't know the signature of the treasurer; I know Mr. Maitland's signature, and I know the taxes were paid. Those receipts were from the same Pioneer Iron Co.'s files that I took the others from.

Mr. HAYDEN: This is offered in evidence.
Mr. ELDREDGE: It is objected to as incompetent and immaterial and not properly proved so as to be admissible in evidence.
(Marked Exhibit 16.)

172 The tax receipts which you show me running to the Pioneer Iron Co. for taxes of 1888 dated December 31, 1888, were taken from the Pioneer Iron Co.'s files of tax receipts which I have charge of, and I know the signature of the treasurer.

Mr. HAYDEN: I offer these in evidence.
Mr. ELDREDGE: Objected to as irrelevant and immaterial.
(Papers marked Exhibit 17.)

As to the two receipts running one to the Pioneer Iron Co. and the other to the Pioneer and Arctic Co.'s for the taxes of 1896, dated January 9, 1897, I paid myself. The Pioneer Iron Co. paid its own taxes there as to the joint tax, ½ was paid by the Pioneer Iron Co. and the other half by the Arctic.

Mr. HAYDEN: I offer these receipts in evidence.
Mr. SHAULL: That is objected to, the same as the last was.
(Papers marked Exhibit 18.)

I paid those two receipts you show me running to the Pioneer Iron Co. for the taxes of 1896 and paid January 9, 1897. I pay them for the Pioneer Iron Co. with the Pioneer Iron Co.'s money.

(Offered in evidence subject to the same objection as made to previous receipts and papers marked No. 19.)

As to those tax receipts you show me, all running to the Pioneer Iron Co., except one which runs to the Pioneer and Arctic Companies, all for the taxes of 1899, paid Jan. 9, 1900, I paid myself with the Pioneer Iron Co.'s money. The Pioneer and Arctic tax was divided, the same as before, we paid our half.

Mr. HAYDEN: I offer these in evidence.
Mr. SHAULL: We make the same objection.
(Paper marked Exhibit 28.)

The 5 tax receipts you show me running to the Pioneer Iron Co. alone for taxes for the year 1900, the receipts dated Jan. 9, 1901, I paid myself with the Pioneer Iron Co.'s money.

(Offered in evidence subject to the same objection and papers marked Exhibit 21.)

173 3 to 21, both inclusive, are tax receipts in ordinary printed form and appearing to be signed in the usual way by the treasurer for taxes on land of the Pioneer Iron Company for the years as specified in the several offers.

There are other receipts I didn't bring, I didn't have time to find them; there are a great many papers, I hadn't time to find them all.

I am familiar with those operations being conducted by the Pioneer Iron Co. in exploring since 1899 south of Negaunee. I have seen them all. None of these explorations are on improved land that I am aware of.

Q. The Pioneer Iron Company had a deed from Harvey of those lands east of Negaunee in sections 5, 4, 3, 2 and 1. You are familiar with the tract, are you not, as the company's land agent?

A. I don't know. You say sectional?

Q. I don't know as one, but 3, 4, 9 and the east half of 5?

A. O, yes, yes, I know the lands.

Q. Are any of these lands good for mining purposes?

Mr. ELDREDGE: That is objected to as incompetent and immaterial and irrelevant.

A. On sections 4, 3, 2 and 1?

Q. And the east part of 5, I think in section 9, you have investigated those lands and you have made extensive investigations of them?

A. According to the best of my belief I don't think much of them for mining purposes. I have investigated those lands for the purpose of ascertaining their value, sometime ago. I remember testifying in the tax case to these particular lands. Those were lands coming to the Pioneer Iron Co. from Mr. Harvey by deed in 1857. The lands covered by this 99 year lease in the south ½ section 6 and in section 7 and 8, 600 and odd acres that were not conveyed by Harvey to the Pioneer Iron Co., but were covered by his 99 year lease, as lands obtained from Harvey are what we consider
174 good mineral lands. I recognize the last described lands as covered by the 99 year lease alone.

Redirect examination by Mr. SHAULL:

Q. Mr. Redfern, did you find any receipts for 1885, 1884, 1883, 1882, 1881 and 1880 and in the '70's from 1872 to 1880?

A. We came across one for 1875.

I brought all I could find; it is great work to examine through the papers, and I didn't have time to go through them all. I don't know where the receipt for 1875 went. I don't think it is here, but I think I sent that one to Mr. Hayden, 1875, I wouldn't be sure. It may have been 1872. I don't remember which years I found. They are all here. I will find and produce the other receipts for these missing years from 1872 to 1885 or 1886, if you want me to. I am afraid I couldn't do it. It is quite a big job to find them.

Q. Will you find them as soon as you can and produce them here?

Mr. HAYDEN: We will agree as far as we are concerned, we will join in the request to Mr. Redfern to produce them at the time he can find them.

I am familiar with the lands embraced in the Pioneer Iron Co.'s plats of lands in the city of Negaunee. I don't remember about the descriptions in the receipt you show me describing certain lands contained in that plat. It says "Pioneer plat." I couldn't say now whether they were Pioneer lands or not owned by the Pioneer Iron Co.

Q. This is a receipt dated Jan. 25, 1872, and purports to be a tax receipt on certain lands in Negaunee. Where did you find this?

A. If that is one of these papers, it come from our office.

Q. From the Pioneer Iron Co.'s office?

A. Yes, from the Pioneer Iron Co.'s office, and as I told you it is an office of the other companies besides.

Mr. SHAULL: I offer the receipt in evidence.

175 Mr. HAYDEN: We object to it on the ground that it does not appear to be at all relevant, we object to it as irrelevant.

Mr. SHAULL: I will withdraw it until I am able to look up the lands described in the receipt and see whether they are Pioneer Iron Co. lands.

R. P. BRONSON, sworn on the part of complainants, testified as follows:

Direct examination by Mr. SHAULL:

I reside in Ishpeming. I am engaged in the lumber business and represent there F. W. Read & Co. We rent land in Negaunee. I have the lease.

Mr. HAYDEN: This evidence is objected to as incompetent and irrelevant.

Mr. SHAULL:

Q. I will just ask you if your piece of land is situated in front of the old Pioneer furnace, so-called, in the city of Negaunee, bounded on the northeast by the sidetrack of the Chicago & Northwestern and on the southwest by the butcher shop; on the northwest by the southeast line of a certain carpenter shop and on the southeast also by the northwest line of a pattern shop.

Mr. HOYT: Before you answer we object first, the question is leading, second, the testimony is incompetent and irrelevant.

Mr. SHAULL:

Q. Whether or not you occupied that piece of land?

A. I cannot remember just exactly the description, but practically that.

Q. I will ask you whether or not your firm of F. W. Read & Co. took a lease of a piece of land near the vicinity of the old Pioneer furnace, so-called, from the Iron Cliffs Co. about the first of July, 1899?

Mr. HOYT: I object to that as incompetent and irrelevant, and I ask that the previous answer be stricken out.

A. We did.

Q. What is the date of that lease?

176 Mr. HOYT: Same objection continued.

A. July 1, 1899.

I have the paper with me, dated July 1st, 1899, signed Iron Cliffs Co. by Samuel Redfern, agent, and F. W. Read & Co., by R. P. Bronson.

Mr. HOYT: Same objection is continued.

I am the person who signed the paper on behalf of F. W. Read & Co. I do not remember that the same was signed by Samuel Redfern, agent, to my knowledge. I think this came by mail. I am not positive. I executed it on behalf of our firm. We have occupied these premises, in that paper described, under that instrument.

Mr. SHAULL: I now offer the paper in evidence and ask to have it marked (Complainants' Exhibit).

(Paper marked Exhibit J.)

This was a lease from the Iron Cliffs Company to F. W. Read & Company for three years from July 1, 1899, covering a small piece of land bounded on the northeast by a side-track of the C. & N.-W. Ry.; on the southwest by Partridge creek; on the northwest by the southeast line of the carpenter shop and on the southeast by the northwest line of the pattern shop, to be used for not more than one business with certain barn and outbuildings, excepting all minerals, and signed: "The Iron Cliffs, by Samuel Redfern, land agent."

COURT:

Q. Has any rent been paid under this lease?

A. I think not, but I am not positive. I don't think we have paid any.

Cross-examination by Mr. HAYDEN:

Q. *Did you ever have a lease before this for these grounds?*

A. I think that we did occupy those grounds for a while. What is the date of that?

Q. This is dated July 1, 1899.

A. No, I think we didn't start in until about the 15th of July. We had no prior lease. We have another lease besides this one. Here it is, the descriptions are not the same, I think.

177 COURT:

Q. Then you have no other lease of these same premises?

A. No, the second lease is a larger lease than the first. It includes these same premises.

Q. Includes this and takes some more?

A. Yes, sir.

It is under this lease that we are actually paying rent. The one you show me is the one referred to.

Mr. HAYDEN: I offer this lease in evidence. It is made on the first day of May, 1900, and is made by the Pioneer Iron Co., and signed by the Pioneer Iron Co., by G. A. Garretson, president, and Samuel Redfern, land agent, and also executed on the part of the lessee by Read & Co., and witnessed by McBride, etc.

(Paper marked Exhibit 22.)

This was a lease from the Pioneer Iron Company to F. W. Read & Company, dated May 1, 1900, covering the same premises as those covered by the lease in Complainants' Exhibit J, and for the same purpose, to run for three years from date, signed: "Pioneer Iron Company, by G. A. Garretson, president, and Samuel Redfern, agent."

Mr. SHAULL: I would like to read a little endorsement that appears on the outside of the lease I offered as Exhibit J, as follows: "Form H in the furnace location in July 1, 1899, and July 1, 1902, Iron Cliffs Company, original."

JOHN DOWNING, sworn on the part of the complainants, testified as follows:

Direct examination by Mr. SHAULL:

I live in Ishpeming. I was 69 years old last January. I have lived in Negaunee. I came there in October, 1860, and went into the furnace business in the Pioneer furnace under I. B. E. Case. He had it by contract at that time.

At the time I came there, the Pioneer furnace was getting
178 its ore for making pig iron from the Jackson mine principally.
I remained there from 1860 to the spring of 1863. I was foreman and overseer of the furnace part of the time, founder and foreman around the yards. I oversaw the casting department, part of the time. He was away a great deal; I was in charge of everything when he was away.

Q. What did the Pioneer Iron Co. pay, if you know, for the ore which it got from the Jackson mine for making iron in the furnace?

Mr. HAYDEN: I object to that as incompetent and irrelevant.

A. I understood they paid a dollar a ton for all iron that was made.

Q. Did they get any ore from other places at that time?

Mr. HOYT: Same objection is continued.

They didn't those first 4 years I was there, only a little that they got on the south side there, about 25 or 50 tons, somewhere along there. That was taken from a place since called the Lucy, I think, but at that time it had no name.

Q. At the time you came there, what can you say as to the woods facing the furnace on the hillside to the south, whether they had been removed or not:

Mr. HAYDEN: The same objections continued.

A. Right in front of the furnace, it was cut off.

Mr. SHAULL:

Q. Whether or not there were any explorations or exploring pits over there at that time?

Mr. HAYDEN: I object to that as incompetent.

A. Yes, I think there was some all along, backwards and forwards.

I couldn't tell you who that exploring was done by. That was before I came there.

Q. Have you ever known the Pioneer Iron Co. ever making further explorations of those lands over on six, on the south of the hill, or on 7 and 8?

Mr. HOYT: Same objection, as incompetent and irrelevant, is continued.

179 In the spring of 1865 I went up to the Washington mine.
I came back to Negaunee in the fall of 1866. I wouldn't be real sure, but I think so. I took charge of the furnaces. There were two of them. I think I was there about 4 years at that present time. Mr. Case was running the furnace at the time I came back in 1866, but he left and I took his place.

Q. Who was the owner of the furnace at that time, if you know, who hired you?

Mr. HOYT: Oh, wait, we object to that.

A. Major Brooks.

Q. Who was Major Brooks' principal, whom did he represent. This man Major Brooks, was he the owner of the furnace?

Mr. HOYT: I object to the question as leading and incompetent and irrelevant.

A. I suppose he was the agent of the Iron Cliffs Co., that is what I understood.

Mr. HAYDEN: I move to strike out the last answer, that he understood it was the Iron Cliffs Co.'s furnace, as incompetent.

The Iron Cliffs Co. paid me for my work; it was generally understood that Major Brooks represented the Iron Cliffs Co.

Mr. HOYT: I object to that as incompetent.

When I left there about 4 years after 1866, I went down to Grand Island furnace, the Munising furnace, for about 18 months, somewhere in that neighborhood. I was running that furnace down there. When I left the Grand Island, I came back to the Pioneer and took charge of that again.

Q. Who hired you then?

A. Mr. Isham.

Mr. HOYT: Same objection is continued.

Q. Whom did he represent, if you know?

Mr. HOYT: Same objection continued.

A. He represented the Iron Cliffs Co., the same as Major Brooks did, the Major had left in the meantime.

180 Q. Who paid *you* for your work during the latter period we are talking about?

A. The Iron Cliffs Co.

Mr. HOYT: Same objection continued.

Sometimes they paid in cash or sometimes a check, likely it was cash all the same.

Q. Did you hear about the Pioneer Iron Co. selling out to the Iron Cliffs Co. about the time you came there in 1866?

Mr. HAYDEN: I object to that as incompetent and irrelevant.

A. Yes, I heard they had bought them out.

Q. Did you ever hear anything more about the Pioneer Iron Co. doing any business there?

Mr. HOYT: Same objection.

A. No, sir.

After that, no, sir. I was in the furnace at the time I came back from Grand island. On the pig iron that was turned out, by way of brand, there was the word "Pioneer." I can hardly tell you how long I remained with the Iron Cliffs Co. at the Pioneer furnace after I came back from Grand island. It must have been 1879 or '80 a man by the name of Root took my place.

Mr. HAYDEN: The same objection.

I am not very familiar with the mines and mining companies that were operated around Negaunee at this time. I just had my business there at the furnace, of course.

Q. Would it have been possible for the Pioneer Iron Co. to have operated that furnace during those years and you not have known it in the position you are occupying?

Mr. HOYT: I object to that as incompetent and irrelevant.

A. I don't think they could, but of course——

Those furnaces when running at their full capacity produced from 20 to 65 tons a day, each furnace.

Mr. HAYDEN: The same objection.

There was nothing regular about it, part of the time there was only one running and part of the time two.

181 Cross-examination by Mr. HOYT:

I went to Negaunee in 1860. I never saw any iron made at the Pioneer furnace before 1860. There was no change in the brand on the iron made after I came there, it was the same. They cast the brand on the pig iron. It was made with a stamp. I found the stamps there when I was there. They were using the same stamps that had been used all the time I was there, but made no change in the stamps.

I understood—and generally understood—that the Pioneer had sold out to the Iron Cliffs. I never understood anything about a lease. It might have been that the Iron Cliffs was simply operating that furnace under a lease, as arranged with the Pioneer Iron Co. I couldn't tell anything about that. I didn't know anything about their business or anything like that. There was a Pioneer Iron Co. when I first went up there, for the first four years I was there. Mr. Case had a contract from them for making pig iron by the ton.

EDWARD C. ANTHONY, sworn on the part of complainants, testified as follows:

Direct examination by Mr. SHAULL:

I live in Negaunee. Have lived there since 1864. I have been in Marquette county since 1856. I remember of working at one time for Sidney Adams and Josiah Hodgkins in 1858. I was making charcoal for Adams and Moore. They were making it for the Pioneer furnace, about where the New York Hematite stands now on section 6, T. 47–26, in the city of Negaunee. The Pioneer furnace was running at that time. It was not '56, I think it was '58 when I went there. My impression is that the Pioneer furnace started to run in 1857. I think sections 7 and 8 in the same township and range were wooded. I couldn't swear to that. I think it was pretty well wooded. The timber on those lands were chiefly maple and birch hardwood.

182 Q. Good, heavy timber, was it?

A. Yes, very good timber indeed.

Q. What was the stumpage per cord worth there for charcoal purposes at that time, if you know?

Mr. HAYDEN: I object to that as irrelevant and it also seems to be incompetent.

Well, the usual prices, as I understood at that time, was 12½c. or what they called a shilling, to 15c. a cord stumpage.

Q. Who appeared to be the general agent, if you know, of the Pioneer Iron Co. at that time, and had charge of the business for it?

Mr. HAYDEN: That is objected to as incompetent.

Mr. HOYT: And an improper question.

A. I think it was Mr. Gay. He appeared to be the man that had charge of the building of the furnace. I couldn't tell, he seemed to be the general manager, the managing director, unless it was Mr. Hungerford, but I am not sure whether he was there at that time or not; I kind of think he was though.

The Pioneer got its ore at that time for smelting at the Jackson mine.

Q. Do you know what the arrangement was as to what they were to pay for the ore per ton?

Mr. HOYT: I object to that as incompetent and irrelevant.

I heard Mr. Merry, the manager or the mining captain at the Jackson mine, say that they were getting a dollar a ton for every ton of pig iron made at the Pioneer furnace.

Mr. HOYT: We ask that that answer be stricken out.

I think that contract was for 20 years.

Mr. HOYT: I object to that and ask that it be stricken out. The contract is in evidence here and that is the best evidence.

After that contract had expired, the ore to run the furnace came from Ishpeming and the Foster mine.

Mr. HOYT: The same objection continued.

Q. Did you hear anything about the Iron Cliffs Co. buying out the Pioneer about 1866?

183 Mr. HOYT: I object to that question.

It was generally understood that the Iron Cliffs had bought all the interests of the Pioneer Iron Co. The Iron Cliffs Co. ran the furnace after that.

Mr. HOYT: Same objection is continued.

I am talking about 1864, after I came back to Negaunee. I am not talking about the early days, after 1866 I limit it. The Iron Cliffs Co. had been doing the business ever since that time until they closed down.

Mr. HOYT: I object to that question, the same objection.

I had business relations with them for years. I was a harness maker and sold them harnesses and such things. The Iron Cliffs Co. paid me. They used horses around the furnace. I charged it to the Iron Cliffs Co. on my books. There was never any objection from them that they were not the proper parties.

The first agent of the Iron Cliffs Co. there was T. B. Brooks.

Mr. HOYT: I object to that.

E. D. Isham followed him.

Mr. HOYT: The same objection.

T. J. Houston followed Mr. Isham, Mr. Maitland followed Houston. I cannot tell you the year Mr. Maitland became the general agent.

Mr. HOYT: The same objection continued.

It might have been in 1885 or 1886. I not sure. I think Mr. Gibbs followed Mr. Maitland as the general agent of the Iron Cliffs Co. Mr. Gibbs took hold right after Maitland let go. Somewhere in the 90's. I cannot tell exactly the year. I am not sure who followed Mr. Gibbs, as agent of the Iron Cliffs Co., Mr. Mills I guess. In the meantime, the Cleveland Cliffs Co. bought up the Iron Cliffs Co. It was then the Cleveland Cliffs Co.

Mr. HOYT: The same objection.

Mr. HAYDEN: I move to strike out the last answer as incompetent and irrelevant.

184 I couldn't tell you the date of that at all, I don't remember.

Mr. HAYDEN: The same objection.

I have done a little mining in and about Negaunee since I came there. I am not aware that the Pioneer Iron Co. ever had an office since I understood it sold out to the Iron Cliffs Co. I have been reasonably familiar with mines and mining companies around Negaunee since I came here.

Mr. HOYT: That is objected to as incompetent.

The Pioneor Iron Co. never did any business after that sale only in its land department. I understood they have kept a man there, the Pioneer Iron Co., that is they always claimed there was a land department, and that Mr. Redfern was the agent of that or the manager of it. That is, that it had certain lands it was looking after.

Mr. HOYT: The same objection.

I was interested in some land over in section 7, in 47-26, spoken of and known as the Davis mine. I believe that mine is located on the southwest quarter of the northeast quarter of section 7; it adjoins the Pendill property, on the north.

Q. When did you become interested in that property?

Mr. HAYDEN: I would like to ask if the lease or option or contract by which he had it was in writing. Were the operations conducted under a written contract?

A. How am I to answer, what do you ask, what was your question?

Mr. SHAULL:

Q. When was it you first became interested in it?

A. I couldn't tell you the year.

It must have been late in the '70's or early in the '80's we developed a mine there and produced ore, not a large mine it did not prove to be.

Mr. HAYDEN: I object to all these questions as incompetent and also irrelevant.

I cannot tell you how much ore has been shipped from that.

185 Q. Do you know how much is still in the mine?

A. No, sir.

Q. Do you know whether the mine has been exhausted or not?

A. No, I understand not; I don't know anything about it. I have not been down there in a long while.

Q. Did anybody representing or claiming to represent the Pioneer Iron Co. ever say anything to you about their claiming any rights on that property?

Mr. HOYT: I object to the question as incompetent and irrelevant.

A. No, sir; never.

Mr. SHAULL:

Q. Did they ever warn you that you were working on the lands that they claimed an interest in?

Mr. HOYT: Same objection continued.

A. No, sir.

We dug some test-pits on section 8, 47–26. I forget on what quarter of section 8 that was, but somewhere on this side, I think across Partridge brook on the southeast quarter of 8. That was sometime early in the '70's. Mr. Foley was engaged in the enterprise with me. We spent considerable money at it.

Mr. HAYDEN: We object to the question as incompetent and irrelevant.

I think we spent four or five hundred dollars.

Mr. HAYDEN: Same objection.

Referring to the Davis mine, we spent there, before we developed a mine, somewhere in the neighborhood of seven or eight thousand dollars.

Mr. HOYT: Same objection continued.

I remember a so-called Pioneer mine being opened over on section 4, 47–26, in the years 1886, 1887 and 1888. The officers of the Iron Cliffs Co. worked there.

Mr. HAYDEN: We object to that as incompetent.

186 I never knew of the old Pioneer Iron Co., so-called, after the year of 1866 hiring men or doing any work of any kind in the city of Negaunee.

Mr. HOYT: Same objection continued.

Cross examination by Mr. HOYT:

I don't know whether the Pioneer Iron Co. paid any of the salaries of the several people whom I think were agents of the Iron Cliffs Co. I had no familiarity with the contract relations for the accountings or settling between the several companies. I am basing my opinion entirely on an impression, because everything was paid by the Iron Cliffs Co. They issued Iron Cliffs Co. money. It was not Pioneer money they paid with. I don't know whether the Pioneer bore a part of that in settlement with the Iron Cliffs Co., or whether the salaries were paid in part by the Pioneer. I don't know but that the harness sold to the Iron Cliffs may have been paid in final settlement between the companies. It was charged to and paid by the Iron Cliffs Co.

When we went on to the Davis mine, I had an option for a lease from Edward Breitung. We got our lease, I am not sure whether it was recorded or not. I suppose the lease was turned over to our successors, if we had one. I am not sure. I think we have a lease though; we had to have a lease before they would buy from us.

Q. Don't you remember, as a matter of fact, that the lease was expressly made subject to the rights of the Pioneer under the 99 year lease?

A. No, sir.

Q. Do you swear that it was not?

A. I will swear that I don't know that it was.

Q. Have you any recollection on the subject?

A. I have a recollection of the land being owned by Edward Breitung. He gave us an option to go on and explore.

Q. How about the lease, I am asking about the lease, if it did not contain that provision?

187 A. I don't know about that. I never heard of it at that time.

Q. You do know, don't you, that Mr. Breitung was in the habit of granting leases and options, and making them all subject to that Harvey 99 year lease?

A. No, sir, I don't.

Q. Do you know that was not so?

A. I don't know. I can't tell you now whether that provision was in the lease or not.

Q. You don't know?

A. I don't remember ever seeing such a thing.

Q. Do you remember positively that you didn't see such a thing?

A. Yes, sir, I do.

Q. Then you say it was not in there?

A. I would say it wasn't in there.

Q. But you are not sure about it?

A. I am sure that I never saw it.

Q. You know that other leases were given at that time and recorded and made subject to that?

A. No, sir, I don't know.

Q. Do you know that there wasn't?

A. No, sir, I don't.

Q. Suppose that leases that were made about that time were submitted to you with that kind of a provision in them, what would you say about your own lease?

A. I couldn't tell you, sir, until it confronted me.

This lease from Breitung was issued I think to the Grand Rapids Mining Co. at that time. It was called the Davis mine afterwards, when they sold to Cleveland parties. As to section 8, we never had a lease from them. We just simply had an option to go there and explore. We never found anything on 8. I don't know anything about the terms that the lease covering the Pioneer mine contain.

I know that the men that worked at the furnace and worked
188 for the Iron Cliffs Co. did the work. That is all I know about it. I don't know how their salaries were paid, or whether the Pioneer had any interest in anything else.

Re-direct examination by Mr. SHAULL:

Q. Did the Pioneer Iron Co. ever, to your knowledge, explore on any of these lands on sections 6, 7 and 8, to which we have made reference, as covered by this 99 year lease?

A. No, sir, never. Not that I know of.

Mr. HOYT: I object to that as incompetent.

They never said anything to me about the improvements we were putting on the southeast quarter of 8, when we were exploring there, or intimated that they had any interest in it in any way. They never intimated to us in any way that they had any interest in these lands on section- 6, 7, or 8.

Re-cross examination by Mr. HOYT:

When we went into the business on the Davis mine, we mined with the intention of exporting the ore. We had no furnace in which to use it. The same thing is true on section 8. We had no furnaces. We didn't intend to use the ore in Marquette county in any furnace. We intended either to sell it or export it.

LOUIS VASHAW, sworn on the part of complainants, testified as follows:

Direct examination by Mr. SHAULL:

I live in Negaunee. I came to Negaunee in 1859. When I came to Negaunee first, I burned coal for the Pioneer, right across the creek from the furnace. The first summer I was there, I made for the Pioneer 4,036 bushels. The wood was cut right there on the spot. I burned it right there on the ground, made charcoal pits. After that I worked for the Pioneer again.

189 It takes 2 cords and one half of wood for 100 bushels of charcoal. That is as well as they all say, as near as you can make it. I never measured it, but that is what they claim. I worked for the Pioneer until they changed names. I don't remember when that was.

Q. To what name did it change then?

Mr. HOYT: I object to that as incompetent and immaterial.

A. The Iron Cliffs they called it, the Pioneer-Iron Cliffs. I remember Major Brooks. He was working for the Iron Cliffs.

Mr. HOYT: The same objection continued.

I worked for him right there at the furnace, as long as he stopped there. I don't remember when he finally left. My work was around the carpenter shop and barn boss and bossing of the horses for the Iron Cliffs Co.

Q. What was wood worth a cord for charcoal burning while you were making it?

Mr. HOYT: I object to that as incompetent and immaterial.

A. I will tell you. I am not sure of that, but I heard tell by good many——

Mr. HOYT: You needn't tell what you heard at all.

COURT: Go right along.

A. That it was worth from 10c. to 15c. a cord stumpage.

Mr. HOYT: I move to strike that out.

It was fine wood where I worked. As near as I can tell you it would be from 35 to 40 cords for an acre where I worked.

Mr. HOYT: Same objection.

It was hardwood, maple, birch, elm and basswood. I never heard of the Pioneer Iron Co. getting ore at any place except the Jackson pits.

Mr. HOYT: Same objection continued.

Afterwards they got most of the ore from the Jackson mine.

Mr. HOYT: Same objection.

I heard of their getting ore at the Foster mine. I couldn't tell you when they got it, but it was when Mr. Brooks came. I never saw any exploring work being done there by the Pioneer Iron Co. before it sold out to the Iron Cliffs.

190 Mr. HOYT: The same objection.

Q. Did it ever do any work after it sold out to the Iron Cliffs Company?

Mr. HOYT: The same objection.

A. No, sir.

Q. Did you know of some mining or some test pits on the hill south of the furnace?

Mr. HOYT: The same objection continued.

A. I know of some test pits, but I don't know who built them. I never heard of the Pioneer Iron Co. doing any work on section 6, 7 and 8, south and east of the furnace, or anybody before Mr. Breitung started in there.

Mr. HOYT: Same objection continued.

I worked for the Iron Cliffs Co. after Major Brooks left there.

Mr. HOYT: Same objection continued.

I couldn't tell you how long. I worked for Mr. Isham. I didn't work there after Mr. Isham left. I quit at the time Mr. Isham was there—yes, I did work there after, come to think, yes. I worked for Mr. Maitland. Mr. Isham and Mr. Maitland worked for the Iron Cliffs.

Mr. HOYT: Same objection continued.

They paid me.

Cross-examination by Mr. HOYT:

They were not working for the Pioneer at all. I know because they changed the name. I don't know what relations existed between the two companies. I don't know whether the Pioneer furnished a part of the money to pay them or not. I don't know anything about that. I never investigated and never inquired. It was enough that I got my money. I didn't care where the money came from. It might have come from the Pioneer, I don't know about that.

LEWIS CORBETT, sworn on the part of complainant, testified as follows:

191 Direct examination by Mr. SHAULL:

I live in Negaunee. I came to Negaunee April, 1875, I think. I was what they call bank boss at that time. I had charge of the charcoal on the bank at the Pioneer furnace under T. J. Houston.

Q. Whom did Mr. Houston work for and represent?

Mr. HOYT: That is objected to as incompetent.

A. He worked for the company.

Mr. SHAULL:

Q. What company?
A. I don't know what company it was.
Q. Who was running the furnace there?
A. I think Mr. Downing was founder when I was there.
Q. Who was he running it for, who seemed to be the company?

Mr. HOYT: That is objected to as incompetent.

A. Well, we got our pay at the Iron Cliffs offices. I don't know who was running it. I worked under Mr. Maitland. I worked there until he left. I don't know what year it was, I think it was in 1890. I suppose he represented the Iron Cliffs.

Mr. HAYDEN: That is objected to as incompetent.

I remember the Pioneer mine so-called, over on section 4, which was opened in the '80s sometime. My teams hauled some of the ore from that mine. The contract for hauling that ore was made during Mr. Maitland's time.

Mr. HAYDEN: I object to that as incompetent and irrelevant.

Mr. SHAULL:

Q. What company did you make your contracts with?

Mr. HAYDEN: The same objection.

A. There was no contract, I think we got 30 cts. a ton for hauling it. The Iron Cliffs Co., the Cliffs office paid me for it.

Mr. HAYDEN: The same objection.

Mr. Maitland was general manager of that part, as I understood. The ore was used at the furnace, all that I know anything
192 about. I think it was the Iron Cliffs was conducting the work at that time.

Mr. HAYDEN: I object to that as incompetent, immaterial and irrelevant. I move to strike out the answer as a guess.

Q. Did you ever know of the old Pioneer Iron Co., during all these years, from 1874 down to the time they went over there on the lots in 6, 7 and 8, about the first of January, 1900, did you ever know of their doing any work or hiring any men?

A. No, sir, unless they did it down at the Pioneer.

I left the employ of the Pioneer Iron Co. I think in 1890. I couldn't say exactly about that. I don't remember what year the Pioneer furnace at Negaunee was dismantled and when the machinery was taken out. It was done at the time they started at Gladstone, but I couldn't tell. It must be eight years ago, I think. They took some of the machinery over to Gladstone; that is, they took it away from there on cars, away from the furnace. I am referring to the Iron Cliffs-Pioneer furnace now being operated at Gladstone.

I couldn't say how many winters my teams hauled ore from the Pioneer mine on section 4. They hauled about twelve tons a day. I had a contract with the Iron Cliffs Co. from one year to another.

Q. You knew that the contract was with the Iron Cliffs Co., did you not?

Mr. HAYDEN: I object to that as incompetent and improper.

A. Nothing was said about the company when I hired out. I was in Connecticut and went to Mr. Barnum's office and came here to work in 1874. Mr. Barnum was the president of the Iron Cliffs Co. I knew he was acting for his company.

Q. And that when you became bank boss under contract, it was for his company, you knew that?

A. Yes, sir.

Mr. HAYDEN: Same objection as before and also leading.

193 Mr. SHAULL:

Q. Did you have a contract ever to make pig iron in the furnace there?
A. No, sir.
Q. From a man named Carroll?
A. No, sir.
Q. Did Mr. Carroll have such a contract?

Mr. HAYDEN: That is objected to as incompetent and irrelevant.

A. I think he did.
Q. Did you furnish any charcoal while he had the contract?

Mr. HAYDEN: Same objection.

A. No, sir.

Mr. SHAULL:

Q. Did you have any business relations with him?
A. Not any at all.
Q. I show you a paper with a receipt attached to it, and ask you if you recognize it?
A. Yes, sir.
Q. What is it?
A. It is a small piece of ground that I unloaded wood on.

Mr. HAYDEN: I object to the testimony as irrelevant and incompetent.

Q. Who signed that paper for and on behalf of the Iron Cliffs Co.?

Mr. HAYDEN: I object to the question as improper and assuming something.

A. The receipt?

Mr. SHAULL:

Q. No, the paper, who signed the paper?
A. It is signed by Mr. Redfern the agent.
I also signed the paper. This is my signature. I am familiar with Mr. Redfern's signature. I didn't see him sign it. I paid rent under this paper. That receipt attached is a receipt for rent paid under that paper.

Mr. HAYDEN: Same objection.

194 Mr. SHAULL: I wish to have the paper introduced in evidence and marked Complainants' Exhibit K.

Mr. HOYT: We object to it as incompetent and immaterial and not properly proved.

Said Complainants' Exhibit K is as follows:

Monthly Lease.

No. —. Issued at Negaunee, Michigan.

This indenture, made this first day of December, A. D. 1894, between the Iron Cliffs Company, a corporation existing under the general mining law of Michigan, party of the first part, and Lewis Corbit of the city of Negaunee, party of the second part.

Witnesseth: That said Iron Cliffs Company in consideration of the rents and agreements hereinafter specified to be paid, observed and performed, and risks hereinafter specified to be assumed by said party of the second part, does hereby let and lease to said party of the second part the following described premises, to-wit:

That part of the south half of block seventeen (17) in the Pioneer Iron Co.'s plat of the city of Negaunee, lying north of the right of way of the M. H. & O. R. R.

said premises to be occupied by said party of the second part as a tenant at will of said first party for the purpose only of storing wagons, sleighs and farm implements.

NEGAUNEE, MICH., *Dec. 5th*, 1894.

Received of L. Corbit —— six dollars, ground rent as per lease for 6 mos. from Dec. 1, '94, to June 1, '95. $6.

IRON CLIFFS COMPANY,
Per GEO. E. O'CONNOR.

195 The second party may remove therefrom at any time without notice and may take away any and all improvements made thereon by him or owned by him provided all arrearages of rent are paid, but not otherwise, and said first party may terminate the tenancy of said premises existing between it and said second party at any time by giving to said second party thirty days' notice written or printed, and such notice may be personally served or addressed, postage paid to said second party at Negaunee, Mich., at the option of said first party and such notice may be given at any time, and it shall not be necessary for such notice to terminate at any one of the monthly periods for paying rent as hereinafter provided.

And the said party of the second part does hereby hire said premises as a tenant at will of said first party and hereby agrees to pay to said first party during the existence of such tenancy the monthly rent of one dollar to be paid in advance on the first day of each calendar month while said premises are so occupied.

And it is expressly agreed that said second party assumes all risks occasioned by any person or corporation carrying on mining, quarrying, or like business on any land or premises adjacent to or in the neighborhood of the premises hereby leased. It is also expressly

agreed that in case said second party neglects or refuses to pay the rent as aforesaid then said company, its agents or assigns, may immediately at any time thereafter, proceed to recover possession of said premises in the manner prescribed by law for non-payment of rent of leased premises.

In witness whereof, said Iron Cliffs Company has caused these presents to be signed by its agent at Negaunee, Mich., and second party has hereunto set his hand and seal the day and year first above written.

THE IRON CLIFFS COMPANY,
By SAM'L REDFERN, *Agent.*
LEWIS CORBIT. [SEAL.]

Signed, sealed and delivered in presence of
——— ———.
——— ———.

196 Q. I show a receipt dated Negaunee, Mich., May 5, 1894, "Received of Lewis Corbett $30."

Mr. HAYDEN: I object to reading the paper into the record before the objection is entered. We object to it as incompetent and irrelevant.

Mr. SHAULL:

Q. "For the rent of the field south of the county road and field east of Healey avenue, both in the northwest ¼ of the southeast ¼ of section 6, 47–26, for the season of 1894." Signed Iron Cliffs Co. By Austin T. Farrell, agent. I ask you if you recognize this paper?

A. Yes, sir.

That is a farm of 8 or 10 acres. I pay the rent, which is covered by that receipt, at the Iron Cliffs office. I think I paid it to this man Austin T. Farrell, whose name is signed to it.

Mr. SHAULL: I offer this receipt in evidence.
(Paper marked Exhibit L.)

Q. Mr. Corbett, I call your attention to a typewritten receipt which says, "L. Corbett & Co., in account with the Iron Cliffs Co., Dr.," dated Negaunee, Mich., October 20, 1898, and ask you to look it over and tell me what it is.

A. That is the same field.

Q. For rent?

A. For rent, this first item is $15.

Q. What is the next item?

A. Rent of woodyard.

That woodyard is south of the D. S. S. & A. track, right opposite the Pioneer furnace on section 6. The next item is for rent of old school house as coal shed, from September 1, 1897, to March 1, 1898, $150—$75. I suppose that was for 6 months. The coal shed is the

scale house built for No. 2 stack of the Pioneer furnace. It was never used at the furnace. It is on the furnace location. It was built by the furnace but never used.

Mr. HAYDEN: I wish to put in an objection to all this as incompetent and irrelevant.

197 The next item is to March 1, 1899, at $125. That is the same shed, that is for rent I paid. The next item is for 1,000 common brick, Nov. 30, 1897, $5. I think that lot of brick came from the furnace. I couldn't tell whether in the demolition of the furnace; they might have come from the Cliffs or from the casting house they had torn down. The next item is 5,000 common brick, May 31, 1898, $20. They came from the Houston kilns. I don't think that is on the Pioneer property at all. They were out two miles. I don't know what section it is. The next item is for one wagon $8 that I got at the furnace, and one old truck $4, gotten at the same place, the old furnace.

I think that came by mail. I paid it at the office of the Iron Cliffs. It appears to be receipted for by the Iron Cliffs Company, Negaunee, Mich., per O'Connor. He was bookkeeper and cashier. I think the date of the receipt, Oct. 26, 1898, is correct.

Mr. SHAULL: I offer the paper in evidence.
Mr. HAYDEN: I object to the paper as incompetent and irrelevant.

NEGAUNEE, MICH., *Oct.* 20, 1898.

L. Corbit & Co. in acct. with Iron Cliffs Company, Dr.

For rent of field south of D. S. S. & A. Ry., Jan. 1, '98, to Jan. 1, '99,...	$15.00
For rent of wood yard south of D. S. S. & A. Ry., Sept. 1, '97, to Sept. 1, '98.....	1.20
For rent of new stock house, as coal shed, March 1 to Sept. 1, '98, at $150.....	75.00
Sept. 1, '98, to March 1, '99, at $1.25.....	62.50
For 1000 com. brick (Nov. 30, '97).....	5.00
For 5000 com. brick at $4.00 (May 31, '98).....	20.00
For 1 old wagon.....	8.00
For one old truck wagon.....	4.00
	$190.70

Paid Oct. 26, '98.

IRON CLIFFS COMPANY,
Negaunee, Mich.
Per O'CONNOR.

(Paper marked Exhibit M.)

198 Mr. SHAULL:

Q. I now hand you two receipts upon which appears printed at the top, with the exception of the name and date, "Negaunee, Mich., Jan. 15, 1897. Mr. L. Corbett bought of Iron Cliffs Co., Dr., Pioneer Furnace department."

Mr. HAYDEN: We object to that as incompetent and irrelevant.

Mr. SHAULL:

Q. Both being in the same form, the other being dated March 16, 1896, and ask you if you can tell me what the first of those receipts is?

A. The first is repairs on a boiler. It as done by their men before they went to Gladstone.

Q. Repairs on your boiler?

A. Yes, sir.

Q. Are there any contra-items here?

A. One set of old harness $8; one wagon $10.00.

Q. I will ask you generally whether any of these items in that particular receipt had anything to do with the Pioneer furnace?

Mr. HAYDEN: I object to that as incompetent and irrelevant.

A. Well, the harness I got at the barn of the Pioneer or the Iron Cliffs, and the wagon the same, I think.

Q. Is that on the Pioneer Furnace tract?

A. It is on the location. I bought them of Mr. Redfern. The work on the boiler was done by their boilermen—Mr. Sliney and men were fixing their boilers, and they put a patch on this boiler.

Q. And the other?

A. This labor?

Q. No, the other receipt, unless that has some reference to the Pioneer furnace over there, I don't think it, this receipt of March 16, 1896, is for what?

199 A. For rent of tracts and buildings at the Pioneer furnace from Sept. 1, 1895, to March 1, 1896, as per agreement made the 28th day of August, 1895, $50.00.

Q. That appears to have been paid March 20, 1896, "Iron Cliffs Co., Negaunee, Mich., per O'Connor"?

A. Yes, sir. I think I received these receipts by regular course of mail and paid them in the regular way during the course of business The tract and buildings consisted of the coal shed from the tracks leading to it on the Pioneer location. I made the agreement in regard to this with Mr. Redfern.

Mr. SHAULL: I offer the receipts in evidence.

Mr. HAYDEN: We object to them as incompetent and irrelevant.

(Papers marked N and O and were as follows:)

These were upon regular printed bill heads of Iron Cliffs Company, Pioneer furnace Department, and read as follows:

NEGAUNEE, MICH., *Jan.* 15, 1897.

Mr. L. Corbit, bought of Iron Cliffs Company, Pioneer Furnace department, Dr.

March 16, '96.—Repairing boiler as follows:

140 stay bolts	4.20	
18 rivets	.24	
60 steel plate	1.80	
Labor	53.93	
		60.17
May 31, '96.—1 set old harness	8.00	
1 old wagon	10.00	
		18.00
		$78.17

Paid Jan. 15, 1897.

IRON CLIFFS COMPANY,
Negaunee, Mich.,
Per O'CONNOR.

200 NEGAUNEE, MICH., *March* 16, 1896.

Mr. L. Corbit, bought of Iron Cliffs Company, Pioneer Furnace department.

For rent of tracks and buildings at Pioneer furnace from Sept. 1, '95, to March 1, '96, as per agreement made the 28th day of August, 1895 ..... $50.00

Paid March 20, 1896.

IRON CLIFFS COMPANY,
Negaunee, Mich.,
Per O'CONNOR.

The paper you showed me, dated Negaunee, Mich., Nov. 8, 1899, saying "Iron Cliffs Co. land department, to Lewis Corbit & Co., city," is the same woodyard, I think, that we have been talking about at the Pioneer furnace on section 6—a small piece of ground half as big as this room, I suppose, that I used. That is a charge for rent of that ground. I think I received that in the regular course of mail from the Iron Cliffs Co. I paid it at the office.

Q. It says "Received payment November 16, 1899, Iron Cliffs Co., per George O'C."; who is he?

A. G. E. O'Connor.

Q. The same gentleman you have referred to?

A. Yes, sir. The third item is pasture field for 1899, $15. That field is up by the cemetery. I don't know what section it is. It is a bush pasture that I rented from Mr. Redfern. It is right opposite the cemetery and runs down to Lobb's farm.

Mr. SHAULL: I offer this in evidence.
(Marked Exhibit P.)

Iron Cliffs Company, land department.

Extension correct. —— ——.
Approved: —— ——.

NEGAUNEE, MICH., *Nov.* 8, 1899.

Sold to L. Corbit & Co., city.
500–12–'98.
For rent as follows:

201	Wood yard south of D. S. S. & A., Sept. 1, '98, to Sept. 1, '99	$1.20
	Cemetery pasture field for 1899	15.00
	Coal shed March 1, '99, to Ma-ch 1, 1900	100.00
		$116.20

Rec'd payment Nov. 16, '99.

IRON CLIFFS CO.,
By G. E. O'C.

Mr. HAYDEN: I object to it as incompetent and irrelevant.

Mr. SHAULL:

Q. I show you a paper dated Negaunee, Mich., Nov. 30, 1900, to Lewis Corbett & Co., city, for rent as follows:

Coal shed March 1, 1900, to March 1, 1901; field south of Ry., Jan. 1, 1900, to Jan. 1, 1901; wood yard, Sept., 1899, to Sept., 1901 ..... $120

Received payment November 12, 1900.
IRON CLIFFS COMPANY,
Per GEORGE O'CONNOR, *Cash.*"

Q. I ask you whether you received that through the due course of the mail?

Mr. HAYDEN: I object to that as incompetent and irrelevant.

A. Yes, sir.

Mr. SHAULL:

Q. Did you pay it in the regular course of business?
A. Yes, sir.
Q. To whom? To whom it appears on the face there?

Mr. HAYDEN: I object to that as leading.

A. I think so. The first item is for the same coal shed; the next item, field south of the railway, that is the same field that I have been referring to south of the D. S. S. & A. on section 6 on the furnace location.

Mr. SHAULL: I offer the paper in evidence and ask to have it marked complainants' exhibit.

Mr. HAYDEN: I object to that as incompetent and irrelevant.

202 (Paper marked Exhibit Q.)

Iron Cliffs Company, land department.

Extension correct. —— ——.
Approved. —— ——.

NEGAUNEE, MICH., *Nov.* 30, 1900.

Sold to L. Corbit & Co., city.
500-12-98 73,378
For rent as follows:

Coal shed, March 1, 1900, to March 1, 1901.....	$100.00
Field south of Ry., Jan. 1, 1900, to Jan. 1, 1901.....	35.00
Woodyard south of Ry., Sept. 1, 1899, to Sept. 1, 1900.....	1.20
	$136.20

Rec'd payment Nov. 30, 1900.

IRON CLIFFS CO.,
Per G. E. O'CONNOR, *Cas.*

Cross-examination by Mr. HAYDEN:

I was employed by W. H. Barnum to come to Negaunee in 1874. I don't know whether Mr. Barnum was at that time not only president of the Iron Cliffs Co., but also the Pioneer Iron Co. I am sure he was president of the Iron Cliffs, and I presume he was of the Pioneer. I knew the Pioneer Iron Co. when I went there. I don't know what relations these two companies bore to each other. I don't know anything about the contract relations these two companies bore to each other. I don't know anything about the contract relations or anything of that kind existing between them. I don't know how much salary, if any, the Iron Cliffs Co. paid to the manager who was in charge of the furnace from time to time, nor whether the Pioneer Iron Co. or the Iron Cliffs Co. paid it.

Q. Where payments were made for work done at the furnace you don't know whether the Pioneer Iron Company furnished the money or the Iron Cliffs Company?

203. A. No, I do not. I think Mr. Maitland represented both the Pioneer Iron Co. and the Iron Cliffs Co. when he was there. I don't know who mined the ore at this Pioneer mine on section 4 in 1886 and 1887. I think the ore was in a stockpile for a year before it was ever started to the furnace.

Q. This Pioneer Bessemer that you speak of was worked along in 1886 and 1887 and 1888, along there, was it not?

A. I think so. I couldn't tell you.

Q. Anyhow, Mr. Maitland was manager at that time of both companies?

A. Yes, sir.

Q. Now you worked about the furnace in some capacity, I don't remember now what you said it was?

A. I done the charcoaling and weighed the ore, weighed out the iron and shipped it. That is after the first two years I done that. I don't think I did that the first two years I was there, but after that until I got through I did that. I don't know whose money it was that was paid to me or my wages. I know the pig iron, the pigs that came out of the furnace were marked "Pioneer." I don't know whether they were marked "Pioneer Iron Co." or not. There was something besides "Pioneer."

Q. What is your impression as to how the iron was marked?

A. I couldn't say as to that.

Q. Something else besides "Pioneer"?

A. Yes, there was.

Q. Wasn't it "Pioneer iron"?

A. Well, I presume it was.

Q. What is your impression about that?

A. I think it was Pioneer iron. Every pattern is supposed to be marked in the bed.

204 Q. The pigs were marked in the bed while they were hot?

A. The impression was made in the sand before the metal went in.

Q. Now, here are some receipts, old wagons and one thing and another. First we will take this receipt dated October 26, 1898, that you have been asked about by the solicitor on the other side. Do you know, Mr. Corbett, that a good deal of this truck at the furnace at the time it was dismantled had been shipped in from outside jobs, kiln yards, etc.?

A. I think there had some of them come from Houston kilns. I don't know whether these had or not.

Q. Didn't some of these things come from some other jobs—Ford river and Felch mountain?

A. They might have come from there. They were old rigs, they were not worth anything anyway, that is to amount to anything.

Q. Mr. O'Connor you say was bookkeeper?

A. Yes, sir.

Q. During the time you were at the furnace, commencing with 1874 until the time you quit in 1890—in 1890 I think you said?

A. I think it was about 1890.

Q. The Iron Cliffs during all that time was operating mines at Ishpeming, was it not?

A. Yes, sir.

Q. The Salisbury mine and the Barnum mine?

A. Yes, sir.

Q. These were quite extensive mines furnishing iron ore, were they not?

A. Yes, sir.

Q. Of the Iron Cliffs Co. And the office of the Iron Cliffs Co. during that time was at Negaunee?

205 A. Yes, sir.

Q. The office for doing the business of those mines?

A. Yes, sir. I think the Pioneer office was in the same place, in the same office, in the same building. I don't know what the ore produced by the Pioneer Bessemer sold for. I don't know at what price it was put into the furnace that was used there. I don't know who paid for it. I think I got 30 cents a ton for hauling. I got paid at the office. The name of the mine was Pioneer-Bessemer.

FRED PIERCE, sworn on the part of complainant, testified as follow-:

Direct examination by Mr. SHAULL:

I live at Negaunee. I am a brick mason. I purchased old brick of the Iron Cliffs Co. several times within the last four years. They got it from the Pioneer furnace.

Mr. HOYT: This testimony we object to as incompetent and immaterial.

I used them for building purposes. I worked a little at one time for the Cleveland Cliffs Iron Co. on their Gladstone furnace.

Q. Did you see some machinery sent there?

Mr. HOYT: Same objection.

A. No, sir. I saw it after it was sent.

Q. State whether or not it was second hand machinery.

Mr. HOYT: Same objection.

A. I couldn't say.

Mr. SHAULL: Do you know where it came from.

A. I don't.

ANDREW SEASS, sworn on the part of complainants, testified as follow-:

206 Direct examination by Mr. SHAULL:

I live in Negaunee. Have lived there since 1873. I held the position of assessor there four or five times, different years. During one of the times I held position of assessor. The map you show me was furnished me by Sam Redfern.

Q. What did he state that it showed?

Mr. HAYDEN: I object to that question as incompetent.
Mr. SHAULL: If he said that it showed anything?

A. He stated that it was lands belonging to the Iron Cliffs Co. that he wanted to get on the assessment roll right and correct.
Q. When was this that this map was given to you, as near as you can tell?
A. I think 1894 and 1895.

Mr. SHAULL: I offer the map in evidence and ask to have it marked.
Mr. HAYDEN: I object to it as incompetent and irrelevant.
(Map marked Exhibit R and accompanies this record.)

Mr. SHAULL:

Q. I will ask you whether or not when you were assessor any pig iron was ever put on the assessment roll at the Pioneer furnace?

Mr. HAYDEN: I object to that as incompetent; the roll is the best evidence?

A. Yes, sir.
Q. Who was it assessed to?
A. The Pioneer furnace, I think.

Mr. HAYDEN: That is objected to.

Mr. SHAULL:

Q. Who was it paid by?

Mr. HOYT: The same objection continued.

A. I think the Iron Cliffs Co. paid it.

207 Mr. SHAULL:

Q. I ask you if you have been acquainted with the mines in and about Negaunee?
A. Yes, a little.
Q. How many years back?
A. Oh, ever since I have been there.
Q. Did you ever hear of the Pioneer Iron Co. doing any work or any exploring in a mining way at Negaunee, or hiring any men?

Mr. HOYT: That is objected to as incompetent and irrelevant.

A. No, sir; I never saw it. I have heard of the Pioneer Iron Co.
Q. Did you ever hear of their doing operating in any way or paying any men?
A. No, sir; not as I know of.

Cross-examination by Mr. HAYDEN:

Q. Do you know that the Pioneer Iron Co. did not operate and did not pay men?
A. No, sir; I don't know that.

Q. Did you have any connection with the mining operations which were carried on at the Pioneer-Bessemer mine during 1886, 1887 and 1888?

A. No, sir.

Q. You don't know anything about it, one way or another?

A. No; I knew there was a mine at the edge of the street called the Jackson.

Q. The Pioneer-Bessemer down on section 4 east of Negaunee?

A. No; I don't know where that is at all.

Q. In charge of Mr. Maitland?

A. No.

Q. Were these red lines on the map when you got it?

208 A. Yes, sir.

Q. Did Mr. Redfern tell you——?

A. He showed me specially. He says, "Seass, these lines show you the property of the city of Negaunee"——

Q. You mean the red lines outlining the city of Negaunee?

A. Yes, sir.

Q. That is what the red lines were for?

A. Yes, sir.

Q. You say he showed it to you as showing the real estate owned by the Iron Cliffs Co. within that red line?

A. Yes; he told me these lines, I think those white ones marked white, belonged to the Iron Cliffs Co. and he wanted to get them on the assessment roll correct.

Q. Did you put them on correctly?

A. I think I did.

Q. For what year was this?

A. I think 1895 was the last year, 1895–1894, and I think 1893 I was out, and two years back of that I was assessor.

Q. And your assessment roll was made correctly, was it?

A. I think it was, yes, sir.

Q. Do you mean all the lands belonging to the Pioneer Iron Co. were put on that roll and the taxes assessed to the Pioneer Iron Co.?

A. I know that there were some lands or property or buildings or lots—I have a certain recollection that they were marked to the Pioneer Iron Co., yes, sir.

Q. You also had some marked to the Pioneer and Arctic Iron Companies, hadn't you, on the same roll?

A. No, I don't think so.

Q. The roll would show, wouldn't it?

A. I think so.

209 Q. And if it shows that, that is true?

A. Oh, yes; I put it there.

Q. What the roll shows about that it is true?

A. Yes, sir.

Q. If you had lands assessed to the Arctic Iron Co. and to the Pioneer and Arctic and Pioneer Iron Co., they were assessed to these companies as owners?

A. Yes, sir; I think so.

Q. And in doing so you didn't think you were acting contrary to any instructions you received from Mr. Redfern?

A. No, sir.

Q. When he handed you this map?

A. No, sir.

Q. As a matter of fact, you didn't assess all these white lands to the Iron Cliffs Co., did you?

A. I think I did.

Q. You think you assessed them all?

A. I think I did. What I mean by assessing to the Pioneer Iron Co. was some lands, I think, going out to the lake. They were designated as lots. If you will get that assessment roll you will see that on them.

Q. Didn't you assess northeast quarter of section 5 to the Pioneer and Arctic Iron Companies?

A. I might, I wouldn't say.

—. The lands in section- 13, 18, 17 and 12 are actually owned by the Iron Cliffs Co., are they not?

A. Are they within that line?

Q. Yes.

A. Yes, they must be, if they were marked white, because that was my instructions.

Q. This land in section 6, marked white, you didn't assess to the Iron Cliffs Co., did you?

210 A. Now, the assessment roll I made out when I got this plat, I made for the Iron Cliffs Co. whatever was white. If it was anything else from the assessment rolls before that I changed it to make it all Iron Cliffs.

Q. You did?

A. Yes, sir.

Q. So that you assessed that white land in section 6 to the Iron Cliffs Co.?

A. I think I did, yes sir.

Q. Are you sure of that?

A. Yes, I would say I was positive; yes, sir.

Q. In the year 1894?

A. In 1894 and 1895. The year it was given to me in. I have heard of the Pioneer Iron Co. I have not seen the tax rolls for the years, not since I left them. I didn't talk with anybody on the subject before I came in here to-day. I have not talked with Mr. Shaull to-day or at any other time. I never met Mr. Shaull until to-day. I didn't talk with either of the gentlemen. Nobody asked me to come here; asked me what I knew about the case, not on the subject I am now testifying to. I was asked to come down here by Mr. Foley of Negaunee. I believe Mr. Foley was working for the Breitungs and Kaufmans. He just asked me to come down. They wanted to see me. That map was given to me by Mr. Redfern.

Q. How did you happen to bring it down here?

A. I didn't bring it down here. I gave it to Mr. Breitung at my office some years ago, either Mr. Breitung or Mr. Jones. I don't know which.

Q. How long ago?

A. Oh, in the last year. They were in the office there and they asked me for it, if they could have it, and I told them yes.

Q. Look at page 40 of this assessment roll for the year 1894 and tell me if it isn't a fact that there is some land in section 6 assessed to the Pioneer Iron Co.?

211 A. Yes, sir.

Q. Those aren't lots, are they, city lots? "All that part of the south half of the northeast quarter of section 6, 47–26,, lying south of the right of way of the Marquette, Houghton & Ontonagon railroad?"

A. Yes, sir.

Q. "West of the boundary line of Maas, Lonstorf and Mitchell's addition to the city of Negaunee, containing 1½ acres," assessed to the Pioneer Iron Co.?

A. Yes, sir.

Q. There are some lots assessed to the Pioneer Iron Co. also?

A. Yes, sir.

Q. On page 33 of the same assessment roll here are parcels in section 4 assessed to the Pioneer Iron Co., are they not?

A. Yes.

Q. The north one-half of the same section is assessed to the Pioneer and Arctic, is it not?

A. Yes, sir.

Q. You assessed it properly?

A. Yes, sir.

Q. You were mistaken when you said you assessed all the white lands to the Iron Cliffs Co.?

Mr. ELDREDGE: He didn't say he did that year.

Mr. HAYDEN:

Q. Look on this roll for 1895, page 47, "all that part of northeast quarter of the southwest quarter of section 6," the same parcel I have described, is assessed to the Pioneer Iron Co.?

A. Yes, sir.

Q. I call your attention to page 44 of this same 1895 tax roll and call your attention to the Pioneer and Arctic lands in section 5 and section 32, assessed to the Pioneer Iron Co. and Arctic Iron Co.?

212 A. Yes, sir.

Q. I call your attention to page 42 of the same 1895 tax roll and show you lands you have assessed to the Pioneer and Arctic in section 32?

A. Yes.

Q. I call your attention to page 41 of that same roll and show you where you have assessed to the Pioneer Iron Co. several lots in section 7 and section 1, and also some land in section 6, the same white land?

A. Yes.

Q. Assessed to the Pioneer Iron Co., isn't it?

A. Yes, sir.

Q. Not to the Iron Cliffs Co.?

A. No.

Q. I call your attention to land on page 40 assessed to the Pioneer Iron Co.?

A. Yes, sir.

Q. I go back to 1894 roll and ask you to look at page 47 of the 1894 tax roll assessed to the Pioneer Iron Co., that parcel in section 6, the furnace property, is it not?

A. Yes.

Q. Page 43, land assessed to the Pioneer and Arctic, that is true?

A. Yes, sir.

Q. Section 5, page 41 of the same roll also, other land assessed to the Pioneer and Arctic in section 32; on page 33 you find half a section assessed to the Pioneer Iron Co., do you not?

A. Yes, sir.

Q. You did it yourself, did you not?

A. Yes, sir.

Q. There may be other in both these rolls assessed to the Pioneer Iron Co., may there not?

A. Yes, sir.

213 Q. You were mistaken in thinking that you assessed those lands to the Iron Cliffs Co.?

A. I think, if I remember right, I got a paper with these minutes to assess these parcels to that Pioneer Iron Co. from Mr. Redfern.

Q. The lands you assessed to the Pioneer you assessed them as owners?

A. Yes, sir.

Q. The lands you assessed to the Pioneer and Arctic, you assessed to those two as owners jointly?

A. I suppose so, yes.

Q. You were not directed by Mr. Redfern to assess any Pioneer Iron Co.'s lands to the Iron Cliffs Co. that you know of?

A. Oh, no.

Q. The Iron Cliffs Co. owns a lot of land in the city of Negaunee, doesn't it?

A. Yes, sir.

Q. The Iron Cliffs Co.'s own property?

A. Yes, sir.

Q. Entirely distinct from the Pioneer Co.'s property in that city?

A. Yes, sir.

Q. The Iron Cliffs Co. owns a lot of property outside the city of Negaunee, doesn't it? Two mines in Ishpeming?

A. Yes, sir.
Q. And also other lands south of Negaunee?
A. Yes, sir.
Q. Houston kilns?
A. Yes, sir.
Q. That's Iron Cliffs land, isn't it?
A. I think so. I don't know.

214 PATRICK REIDY, sworn on the part of complainants, testified as follows:

Direct-examination by Mr. SHAULL:

I live in Negaunee. I am a laborer. I came to Negaunee in 1865. When I came there I worked at mining for Captain Merry for four years. I then went to work for the Iron Cliffs Co. I worked for them about seven years. After that I worked at laboring right along.

Mr. HAYDEN: I object to this as incompetent and immaterial.

I worked in the bank, shoveled right on everything in that line—charcoal.

Q. Did you take a contract of any kind from the Iron Cliffs Co. for loading ore over on section 4 at what was known as the Pioneer-Bessemer mine?
A. Yes, sir.
Q. When was that?

Mr. HOYT: I object to that as incompetent and immaterial.

A. It was about 12 years ago.
Q. What was that contract, what were you doing, if you remember?

Mr. HOYT: I object to that as incompetent and immaterial.

A. Putting that in cars. I used some of those cars over at the furnace, the old Pioneer furnace.

Mr. HOYT: The same objection.

The Iron Cliffs Co. paid me for that work. Mr. Maitland was the manager of the Iron Cliffs over there at section 4 of the Pioneer-Bessemer mine.

Mr. HOYT: Same objection.

Q. Did you ever haul any ore from the Pioneer pit at the Jackson mine for use in the furnace?
A. I did, sir.

215 Mr. HOYT: Same objection.

Mr. SHAULL:

Q. Who employed you to do that?
A. Mr. Maitland.
Q. Who for?
A. For the Iron Cliffs Co.

Mr. HOYT: Same objection.

A. For the Cliffs furnace.

Mr. SHAULL: Did you ever hear of any work being done by the Pioneer Iron Co. since you were in Negaunee, 1866?
A. No, sir.

Mr. HOYT: The same objection to that.

Q. Did you ever hear of its hiring any men or mining any ore or anything like that?
A. No, sir.

(Same objection.)

Q. Do you know who run the furnace from 1866 down to the time when they closed down, what company?

(Same objection.)

A. I couldn't tell you.
Q. Who had the general reputation of running them?

Mr. HOYT: That is objected to as incompetent and immaterial and the question is improper.

A. Well, I don't know; I am sure I couldn't tell anything about it.

Q. Whether or not you loaded most of the ore that came from the Pioneer-Bessemer mine over on section 4?

Mr. HOYT: Same objection continued.

A. I was two months there working.

Mr. SHAULL:

Q. You had that by contract or by the day?
A. By contract.

Mr. HOYT: Same objection.

Mr. SHAULL: You were paid for that in the same way you were paid for the other work?

(Same objection.)

216 A. No; I got 55 cents a car.
Q. Who paid you?

(Same objection.)

A. The Iron Cliffs Co.

Q. Did you ever hear of the old Pioneer Iron Co. running this furnace or doing any work around the furnace since you came there?

Mr. HOYT: Same objection.

A. No, sir.

Cross-examination by Mr. HOYT:

Q. Who have you talked with about this case and the testimony that you were going to give?
A. I don't know what you mean.
Q. Who has been talking to you about the case and the testimony you were going to give? You have had some conversation with somebody, haven't you?
A. Only what I had with Mr. Shaull here.
Q. When did you see Mr. Shaull?
A. I saw him here a few minutes ago.
Q. You saw him before, too, didn't you?
A. No, not before I saw him here.
Q. Whom did you see besides Mr. Shaull?
A. I saw Mr. Jones.
Q. Who is Mr. Jones?
A. He is right here, I guess, somewhere.
Q. Have you seen Mr. Breitung?
A. No, sir.
Q. Did you see Mr. Kaufman?
A. No, sir.
Q. When did you see Mr. Jones?
A. Oh, about a month or more.
Q. He had a long talk with you on the subject, did he?
A. Yes, sir.
Q. He told you, didn't he, to come here and swear that
217 you didn't know of the Pioneer Iron Co. doing any business?
A. No, sir, he didn't.
Q. What did he tell you?
A. He only asked me where I worked and what I done.
Q. He told you that you worked for the Iron Cliffs, didn't he, and not the Pioneer?
A. No, he didn't.
Q. What did he say?
A. He asked me where I worked.
Q. What did you tell him?
A. I told him I worked for the Cliffs Co.
Q. How did you know you worked for the Cliffs Co.?
A. I know.
Q. How did you know?
A. I worked for them and got paid for it.
Q. Who paid you, the Cleveland Cliffs Co. or the Iron Cliffs Co.?

A. The Iron Cliffs Co.
Q. How do you know it was the Iron Cliffs Co.?
A. Well, I don't know.
Q. You don't know?
A. No.
Q. Why did you say you did?
A. I got paid in the office.
Q. That is all right; that was the office of the Pioneer Iron Co., too.
A. I couldn't say anything about that.
Q. It might have been the money of the Pioneer that paid you?
A. Yes.
Q. The contract you are talking about may have been made with the Pioneer Iron Co.?
A. It may for all I know.
218 Q. In other words, you did business with Mr. Maitland?
A. Yes.
Q. And you know he represented the Pioneer Iron Co.?
A. I couldn't say anything about that.
Q. Do you know that he didn't.
A. I never heard, I am sure.
Q. You don't know who you were working for?
A. No, I don't.
Q. Who put it into your head to come here and say that you were working for the Iron Cliffs Co., didn't Jones?
A. No, sir; he didn't.
Q. You don't really know?
A. All the time I worked for the Iron Cliffs Co.
Q. You thought you did?
A. Yes.
Q. You don't know whether you did or not?
A. I don't know.

PETER LAMIRE, sworn on the part of complainants, testified as follows:

Direct examination by Mr. SHAULL:

I live in Negaunee. I came there in 1864. Right away after I got there I worked for the Lake Superior Iron Co. for one summer, then I went to work for the Iron Cliffs Co. I went to the Iron Cliffs location and built some houses. I did all kind of work for them. I worked at the old Pioneer furnace for them.

Mr. HOYT: I object to that as incompetent and immaterial and leading and improper.

The first time I worked about a week, in 1866, more or less. After 1866 I worked at the furnace.

Mr. HOYT: The same objection.

219 I worked there about three years steadily, and afterwards off and on until the furnace shut down.

Mr. HOYT: The same objection.

I think the furnace shut down in 1894.

Mr. HOYT: The same objection.

I worked for the Iron Cliffs Co., I suppose. (Same objection.) I suppose the Iron Cliffs Co. paid me for my work. (Same objection.) I was paid at the company's office, I suppose the Iron Cliffs Co. was running the furnace there.

Mr. HOYT: The same objection.

I never heard of the Pioneer Iron Co. exploring any or getting any ore out of the Breitung lands in sections 6, 7 and 8 while I was working there.

Mr. HOYT: The same objection.

I heard at the time that the Iron Cliffs Co. bought out the old Pioneer Iron Co. in 1866.

Mr. HOYT: I object to the question as incompetent and improper.

Q. Was it generally understood and known in and about Negaunee that that had happened there at that time?

Mr. HOYT: The same objection and the question is improper.

A. It was talked about around there, yes, sir. Since the old Pioneer furnace went out of blast in 1894 they took the machinery out and tore down the building, half of it.

(Same objection.)

Q. You may state whether or not scrap iron was left that was not worth taking away, and the machinery was sold or parts of it?

Mr. HOYT: The same objection.

A. I couldn't swear to it, but I see nothing around there now any more.

220 Cross-examination by Mr. HAYDEN:

When I first started to work at Ishpeming I worked at the Lake Superior mine. We used to call it the Burt mine at that time. That was in 1864 in the summer. The Barnum mine or the Salisbury mine hadn't started yet. I couldn't tell you the exact date that the Salisbury mine started. I think it was earlier than the early 70s, 1870 or 1871 or 1872. I knew of their starting. They were part of the Iron Cliffs mines. They worked a good many men, a large number. The greatest number of men that worked at this furnace at Negaunee was about 100 men altogether, I suppose. The

operations conducted by the Iron Cliffs Co. employed so many more men than any of the others employed at Negaunee in the furnace or in any other way on the wood jobs, that the Iron Cliffs Co. overshadowed the Pioneer. Every body called the officer who represented both companies as representing the company that did the most business. The Iron Cliffs Co. did the most business.

Q. What the Pioneer Iron Co. did was a small business?

Mr. SHAULL: I object to that; it is assuming something that the witness has not testified to.

Q. You say you suppose you were employed by the Iron Cliffs Co. at the furnace, you don't know that, do you?

A. Well, I couldn't swear to it, but that was the idea that we were working for them. The Iron Cliffs Co. was a big company. I don't know that Mr. Maitland didn't represent the Pioneer Iron Co. at the time I first worked at the Pioneer furnace. Major Brooks hired me. Mr. Isham succeeded Major Brooks as manager there. I worked under Mr. Houston also and Mr. Maitland. I was there for a long time. I suppose these men represented the Pioneer Iron Co.
221 as well as the Iron Cliffs Co. I don't know whose money it was I got when I was paid. It might have been the Pioneer Iron Co.'s money for all I know.

Redirect examination by Mr. SHAULL:

Q. If I understand you, Witness, correctly, you say you suppose that these men may have represented the Pioneer Iron Co. also, but that you knew they represented the Iron Cliffs Co., is that the idea?

Mr. HAYDEN: I object to that as improper and leading.

A. Well, I want that repeated over.

Q. You don't know that these men represented the Pioneer Iron Co., do you?

A. I couldn't swear to it.

Q. You do know they represented the Iron Cliffs Co., don't you?

Mr. HAYDEN: That is objected to as leading.

A. That was the idea.

Recross-examination by Mr. HAYDEN:

As far as my knowledge goes, I don't know any more about whether they represented the Iron Cliffs Co. than that they represented the Pioneer. I don't know either way. It was a mere supposition on my part.

W. J. ALLEN, sworn on the part of complainants, testified as follows:

Direct examination by Mr. SHAULL:

I live in Humboldt. In 1870 I started exploring for Mr. Breitung on section 6. Were exploring, sinking pits.

Q. On the southeast quarter of southwest quarter of 6, 47–26?

222 Mr. HOYT: I object to that question as incompetent, immaterial, improper and leading.

A. Yes, sir. I didn't work there very long, not many weeks, for Mr. Breitung, at the time we were working there. Mr. Breitung was making some kind of lease with Mr. Waterman, I think, and a Mr. Burt of Milwaukee, and I remember that Mr. Burt from Milwaukee came up and told me that they had a lease of the mine explorations.

Mr. HAYDEN: I object to that as hearsay.

He told me that they had a lease from Mr. Breitung, and asked me to work for them, asked me to run the explorations and run the mine for them, if there was anything found there. I did. We must have taken out in my time perhaps four or five thousand tons of ore. We must have spent perhaps from $15,000 upwards. I couldn't tell you, Mr. Burt was keeping track. We put in a rock cut perhaps 300 feet into the pit of ore before we did any shipping at all.

Mr. HAYDEN: I object to that as incompetent and irrelevant.

This was in 1870–'71. We built a dock down near the railroad, down by the yard and built the dock ourselves and shipped ore. We shipped until I left in that way.

Mr. HAYDEN: Same objection.

While we were on this work we did some ore exploring to the east of that, and on same land sunk some pits on the ore that the New York Hematite sunk their shaft on now.

Mr. HAYDEN: Same objection.

I did some exploring on my own account shortly after that. We were all exploring for ore, and I was in the same boat with the rest, and I had an option of Mr. Breitung on section 8 and went down there to explore.

Mr. HAYDEN: Same objection.

223 I explored the Allen mine on the southeast quarter of the northwest quarter of 8 and opened it up and shipped ore.

Mr. HAYDEN: Same objection.

We spent perhaps $15,000 or $20,000 there. This, I think, was in 1872.

Mr. HAYDEN: I object to the testimony as incompetent and irrelevant.

I couldn't tell you how many tons we shipped from there. We might have shipped six or seven thousand tons, perhaps, but I couldn't tell you, because Mr. Crocker and Mr. Sheldon were attending to that part. I did work for Allen and Blake on what was called the Bay State or Green Bay mine on the east half of the northwest quarter of 8. That was a good while later on. I can hardly tell you, about 15 or 16 years ago perhaps. Mr. Blake and myself took an option there and had a lease, and we sunk a shaft and we took in another party, Mr. Foley and some others.

Q. Was it in or about 1879?

A. Perhaps it was; I couldn't say just exactly. I know we were there and I did the work there, of course. I couldn't tell you how much money we spent there on that exploration. I didn't stay there after we organized the company that we organized. I didn't stay there very long.

Mr. HAYDEN: Same objection.

We didn't take much at this last time. Mr. Herman Fitzsimmons opened it up previous to this.

Mr. HOYT: Same objection.

He had a good sized opening there when I went on there and shipped a good many thousand tons of ore.

(Same objection.)

Q. There was some considerable ore in sight?

A. The same as they shipped, yes, sir.

Q. Have you any idea how much was still in sight?

224 A. Oh, I couldn't say.

Q. Some thousand of tons?

A. I couldn't tell you that at all. We might come up against rock in one foot or we might go one hundred feet, we don't know, you know. I knew the Ada mine on the southeast quarter of the northwest quarter of section 8. I had to do with that property about the fore part of January, 1873. I paid $5,000 for that to Maas & Lonstorf and the panic came on right away afterwards. The $5,000 is in there now. It is standing now just as it was at that present time. I don't think there was a barrel full of anything moved from that day to this.

Q. Considerable ore in sight?

A. The same as was there before.

Q. The same grade?

A. Yes, it seems to be there. That is all; we don't know how much, of course. I didn't have anything to do with the explorations on what was known as the Jefferson forty, the northeast quarter of the southwest quarter of 7. At the time I was working there the

Pioneer Iron Co. didn't do any work on this land that I had to do with.

Q. Did you ever know of the company doing any work?

Mr. HAYDEN: That is objected to as incompetent.

A. Well, if you ask me that, I must say, yes.

Q. When?

A. When we were working on the New York Hematite. It is called the New York Hematite now. It was the Grand Central when I opened it up. There was a pit that I understood the Pioneer Iron Co. had put in before I opened it; there was a pit there and that they had opened it and taken out some ore and taken it over to the furnace. That was over on the hillside south. I couldn't tell you anything about how long before I was there they had opened that. The Pion- Iron Co. didn't warn me that they had any
225 rights there while I was making these improvements on this land.

Mr. HAYDEN: I object to that as incompetent and irrelevant.

I have been a resident of Negaunee most of the time since I came there to the present time. I have been away and been back. I have been away now to Humboldt a year and nine months. I was 13 months at the Great Western mine at Crystal Falls. With that exception I have been there all the time.

Q. From the time you came there in 1871 down to a year and a half ago, when you finally left, did you ever hear of the Pioneer Iron Co., so-called, hiring any men or doing any work of any kind in or about the city of Negaunee?

Mr. HAYDEN: I object to that as incompetent.

A. I worked for the Pioneer Iron Co. 1874. I worked for the Pioneer mine at the Jackson. I don't know who was running the Pioneer mine at the Jackson. I suppose I was working for the Pioneer Iron Co., that is all I know. Mr. Captain Christopher hired me at the Jackson. The ore from that Pioneer pit of the Jackson mine was being used at the furnace.

Cross-examination by Mr. HAYDEN:

I never had the Waterman lease that I spoke of. I couldn't tell you whether it was in writing. I never had any lease at all. It was Bert Waterman had the lease of that property. I worked for them. I had a lease to myself or party in some of the other explorations or mining. I think it was the Allen mine. I think Mr. Crocker had the lease—drew it and had it. I never had it in my life, no, sir. I couldn't tell anything about whether it was recorded. They did that part of the business. I have not papers at all
226 relating to any of these explorations or operations. I never saw any title papers from Edward Breitung under which the

operations were being conducted at the time we were conducting the operations that I remember. I might have signed. I have a faint recollection now that I signed one that Mr. Crocker and we had. I now come to think, but I have forgotten all those things, you know. Mr. Breitung never gave us—when I took the Allen mine to explore, he gave me an eighty and he didn't give me no writing. He says you go on and explore and when you find ore, I will give you a lease; so I went on that way, and then I think Mr. Crocker drew the lease. It seems to me I signed the lease. That was the lease to Allen and Crocker. I couldn't tell you whether there was a clause in that lease substantially like this: "Said Breitung agrees to permit the Pioneer Iron Co., or its successors, to use such mining rights as it possesses under a certain conveyance from said Harvey, dated September 17, 1857, and recorded the same day in the Book of Miscellaneous Records, page 64, in Marquette county, and this lease is made subject to such mining rights." I was mining my ore for shipment. We did ship, of course. What we mined wasn't being mined to use in the furnace, but to be shipped outside.

JAMES FOLEY, sworn on the part of complainants, testified as follows:

Direct examination by Mr. SHAULL:

I live in Negaunee. I came there in the spring of 1867. I am engaged in the mining business and have been engaged in that business most of the time since I came to Negaunee. I have done exploring work in Negaunee since I came there. I have explored on sections 6, 7 and 8, 47–26, in Negaunee. I first explored
227 on 7 on what is now known as the Davis. That is the southwest quarter of the northwest quarter of 7. I think that was in 1879. Associated with me in that exploration were Mr. E. C. Anthony at one time and Mr. Maitland and Mr. Crocker and others at different times. I obtained the right to explore on that land at that time from Mr. Breitung.

Mr. HAYDEN: That is objected to as incompetent.

I sunk test pits and shafts, etc. I discovered ore and finally developed a mine, yes, sir.

Mr. HAYDEN: I object to that as incompetent and irrelevant.

I was superintendent of the operations of the Wheeling after it was developed for about two years—that is now the Davis. I sunk three shafts and a number of test pits and found ore and mined and shipped some. I am familiar with these premises yet. The pits are still there, but the old buildings I put there aren't there now. They are buildings of the Davis. There is machinery there. There must have been in the neighborhood of six or seven thousand dollars spent there in exploration and operation up to the time I severed connection with it.

Mr. HAYDEN: The same objection.

I don't know how much has been spent there since in the improvements that have been placed upon it, nor anything about its present condition, only from hearsay. Our work was never interfered with by the Pioneer Iron Co.

Mr. HAYDEN: The same objection.

I never heard of them in connection with this piece of land as having any claim on it. I worked on the adjoining forty east of that which is now the Milwaukee in the fall of 1879. That is the southeast quarter of the northwest quarter of 7. Mr. Adams was associated with me in that exploration. We continued to push these explorations from that time up to 1881, when we sold
228 it, and I was superintendent for three years for the Milwaukee Mining Co.

Mr. HAYDEN: The same objection to this as before.

We shipped from the Milwaukee 35,000 to 40,000 tons a year. I couldn't tell exactly. I should say we got out 40,000 tons each year. After it was the Foley we shipped 10,000 tons. We put up buildings and bought machinery. (Same objection.) We sank a number of shafts.

Q. Did you drive any drifts or make any openings?

A. We did.

Mr. HAYDEN: All leading questions we object to for that reason.

It is pretty hard for me to tell the total amount of money spent on this property during the time I was connected with it by way of improvements.

Mr. HAYDEN: Same objection to this.

I think that our ore cost a dollar a ton on an average to put it on the cars, and then the total ore that was shipped would get at it pretty near. That covered what it cost to put it into the car.

Q. Did that cover the permanent improvements also that were placed upon the land, that cost of a dollar a ton?

A. No; I guess we had some money in before that.

Mr. HAYDEN: I object to that question. It is an assumption and incompetent.

Over $30,000 must have been put in there by way of improvements and permanent betterments on the land. The ore wasn't exhausted when I left it. The next description with which I had to do was section 6. (Same objection.) I think the southeast quarter of the northwest quarter, that would be one of the New York Hematite forties. We had two forties; that would be the west one. There was one east of that. On the southeast quarter of the
229 southwest quarter of section 6 we cleaned out an old pit. We bought the property, cleaned out the pit, sunk a shaft and

shipped some ore, not a great deal. That improvement was put on south of the railroad tracks that ran across that 40. By purchasing the property I mean we bought the option or lease. We sank quite a number of pits there. We sunk a pit near the railroad water tank, that has since been taken possession of by the people claiming to be on there as the representative- of the Pioneer Iron Co.

Mr. HAYDEN: The same objection to that.

I didn't sink that pit very deep; I guess only about ten feet; that was sunk by Nealy and Sweeney before we bought the property.

Mr. HAYDEN: I move to strike that out as hearsay and incompetent.

I put in some crosscutting though, drifting at the bottom of that pit. I didn't discover any ore. It was kind of a dioritic slate or schist in that drift. I had some machinery near that place at the time the people claiming to represent the Pioneer Iron Co. took possession, and have yet.

Mr. HAYDEN: The same objection.

That machinery was a boiler, engine and hoist all combined and tank for water and pipes and other things. That machinery is there. It is fast to the ground yet. Those people have opened out our shaft and sunk it deeper. (Same objection.) I did diamond drilling on that property. I sank another shaft right close to the railroad track, about 45 feet. I found there dioritic schist all the way down. Those people of whom you speak didn't take possession of that shaft also. There was a number of test pits between that and the west 40. W- found ore at different places. We never sunk down very great depth, though. We didn't ship any ore
230 from them, only from the New York Hematite pit. The New York Hematite pit is next to the Grand Central, pretty near the west end of the property. I don't think we shipped but a couple of thousand tons from there. It was a fine grade of ore.

Q. Yes; I mean what did you put on there by way of permanent improvement and betterments and by way of exploiting it to show the ore on it, including the pits?

A. I think we paid $22,500 for the property of Neely & Sweeney and then we bought five foot drums and double engine and put them to work there and wire ropes.

Q. What did you spend altogether on the work and the machinery that you put in there permanently to better it?

A. It would be very hard for me to tell. In the neighborhood of four or five or six thousand dollars by way of machinery.

Mr. HAYDEN: I object to that as incompetent and also as a guess.

We must have spent altogether in the neighborhood of $55,000 to $57,000 on the New York Hematite labor machinery and everything else.

Mr. HAYDEN: That is objected to as incompetent and irrelevant.

The next 40 upon which I did any work after the New York Hematite 40 is what is known as the brickyard 40, that is the northeast quarter of the southwest quarter of section 8, 47–26. I think that it was in 1886 we worked there. The Pioneer Iron Co. didn't object to our spending this money on these and other places I have mentioned.

Mr. HAYDEN: I object to that as incompetent and irrelevant.

To my knowledge they didn't assert that they had any right or interest in the land. I think it was in 1886 I sunk a shaft in the brickyard forty 97 feet deep. We had the ore from the start.
231 We started in ore; it was a lean ore. I never had it assayed, but I know it was a lean ore. There is some of it there yet. We sank through 97 feet in ore and then I dug a drift to the south and we drifted about 18 or 20 feet that was in ore. That is all I did on that forty. These people who entered on or about January 1, 1900, claiming to represent the Pioneer Iron Co. didn't start on that 40.

Mr. HAYDEN: I object to the testimony as incompetent and irrelevant and also an assumption.

I couldn't tell you from memory when they entered upon this brickyard 40. They couldn't have been there more than about two months or such a matter. They, these Pioneer Co. people, didn't say anything when I was working there, or assert any interest or claim any right. I think I let a contract for that shaft for $6 a foot. It was 97 feet deep.

Mr. HAYDEN: The same objection.

They are drilling upon that brickyard 40. I couldn't tell whether or not they are drilling in the body of ore that my shaft was in. They are drilling near that place, I should say in the neighborhood of two or three hundred feet from my shaft. That was all I did there on the brickyard 40. The next 40 I explored I think was across Partridge brook on section 8 with another party. I think it was the south half of the southeast quarter, down near Partridge brook, south of Partridge brook. It was west of the 40 of the south half of the southeast quarter of 8. We sunk test pits. In that exploration Mr. Anthony was with me and Joseph Quinn and others. I don't remember them all now. These explorations were carried on before I did any work on the brickyard 40; it must have been in 1884–1885, somewhere along there. We sank a dozen or two of pits from the surface to hard pan. Sunk them very deep.
232 We had one pit over 40 feet deep. We didn't do anything else except sinking test pits on that. I don't know what it cost over there on 8.

Mr. HAYDEN: We make the same objection.

Must have been five or six thousand dol-ars, somewhere in that neighborhood. While I was exploiting these operations the Pioneer Iron Co. didn't say anything to me about claiming any title to that land or interest in it or claim upon it. (Same objection.) I did a little work for a Marquette party on what was known as Baraga 40, upon the New York Hematite and the Blue.

Q. That would be the southeast quarter of the southeast quarter of 6?

A. I don't remember that description, but I think that is it.

Mr. HAYDEN: Same objection.

I had a shaft sunk for Swineford, Bending and others in Marquette. The shaft was in the neighborhood of forty feet deep and I made a contract to sink it twenty feet more, if I remember right; that is about it. That shaft was close to the right of way of the Chicago & Northwestern Railway track, south of it, between the public highway and the railway track. We found very lean ore. It must have been 55 or 60 feet deep when I left it. I didn't put in any crosscuts or anything of that kind. We timbered the shaft. I didn't do that. It was done. We timbered up what we call the collar of the shaft, to make it safe, and below that it wasn't timbered. The ground was hard enough to stand without timbering. The shaft didn't cost over $20 a foot from the surface.

Mr. HAYDEN: I object to that as incompetent and irrelevant and a guess.

I did some churn drilling after that, if I remember right, about three holes. We didn't go very deep, 45 or 50 feet. We
233 didn't go through the surface. The drift was deep there. That was for the purpose of finding ore. The churn drilling didn't cost much, about $75 or $80. During the time I was working on this Baraga 40, the Pioneer Iron Co. didn't intimate to me that they claimed any interest in this property. (Same objection.) I was never interfered with by anybody. I think it was in the 80's that I did this drilling—about the time I sunk the shaft. I was connected with what they call the Chicago mine on section 7. It would be the south half of the southeast quarter. Our work was being prosecuted there about the middle of the 40, I should say, north and south on the east 40. That was in 1884, I think. Associated with me in that enterprise was Stephens, Callaghan and Adams and some Chicago parties. They were working in the mine before I went there and I was elected superintendent, and I went there and took charge. I was there about a year. We were mining ore there and hoisting it and putting it in stock. There is some there yet in the stockpile.

Mr. HAYDEN: Same objection.

I couldn't tell you how much we mined; not over two or three thousand tons after I went there.

A. There were a couple of big pits they took ore out of.

Q. Had they shipped some ore?

A. Yes, sir.

Q. Judging from the size of the pits, would you say the shipments had been large or small?

Mr. HAYDEN: I object to that as improper and incompetent. There is no foundation laid for it, and irrelevant.

A. I couldn't tell you that, because it was poor rock and we had to waste a good deal of it picking out ore.

Mr. SHAULL:

Q. Was there much ore in sight at the time you were there?

234 A. That kind of ore, there was a good deal. Of the improvements, the dock is there that I built after I went there and part of the shaft house. I think there are maybe a few posts of the trestle work I had from the shaft to the docks. They had a drum, an engine, a boiler and some pumps.

Q. How much in your opinion at the time you left there had been expended in improvements and betterments of a permanent nature on that land up to that time in developing that mine?

Mr. HAYDEN: I object to that as incompetent and a guess, no foundation laid for it and irrelevant.

A. I couldn't guess at that. Before I was there a boiler, an engine and a four-foot drum. A double engine I think those days cost about $1500, and the boiler must have been worth $500 or $600, and a lot of T-rails running out to the dock. There are some there yet in the shaft. I didn't know or hear of the Pioneer Iron Co. making any claim to or interest in this property while I was there overseeing it. (Same objection.) I did a little work at one time on what was known as the Jefferson, south of the Milwaukee. I think that the northeast quarter of the southwest quarter of section 7. That was about the time I was operating at the Milwaukee. I sunk a number of test pits.

Mr. HAYDEN: The same objection as incompetent and irrelevant.

Mr. Adams was associated with me in that enterprise. We did not find anything. We probably spent a couple of hundred dollars in that exploration. The Pioneer Iron Co. never made any claim to any place that I worked on those lands. I don't remember now that I did anything else upon the other forties in these three sections. I have been somewhat familiar for years with those lands and the improvements made upon them by other parties.

235 Q. Whether you have at different times been over these lands and worked about them so as to know of the improve-

ments and natural outcrops of ore about them, ore that outcropped on the surface?

A. Yes, sir.

Mr. HAYDEN: The same objection.

I remember of Kirk Lewis of Marinette and others working upon the east 40, north half of the northwest quarter of section 7 known as the Aetna. It must have been in 1881 or 1882. Mr. Breitung was the owner of the fee at that time.

Mr. HAYDEN: I object to that as incompetent and irrelevant.

I don't know much about what those people did there in 1882 or 1883. They were sinking a pit there and hoisting some ore out. I saw the ground they were hoisting out.

Mr. HAYDEN: The same objection.

I don't know how much ore they got there. I have seen them working upon the northwest quarter of the northeast called the Shad or Manganese. J. W. Shad made the explorations upon the west 40 in 1879. They had some ore there. I don't know what the extent of the ore was. He did a large amount of work in the way of test pits and open pit work, stripping off. They were getting lean ore. It came up to the surface. I couldn't tell you exactly what grade of ore they got there. I should say it was somewhere about 57 per cent. or 58 per cent. iron; that is what they were shipping.

Mr. HAYDEN: I object to that as incompetent and irrelevant.

Mr. Breitung was the owner of the property at that time. (Same objection as incompetent and irrelevant.)

I remember that Lonstorf and Maas commenced work on the northeast quarter of the northeast quarter of 7, I think in
236 1869. I am not sure about that. They only worked there part of a year. They were mining some ore and shipping it. They had a track in there and I remember I went over there one day with Mr. Macomber to see what they were doing there, and they were loading up, the day I was there. I couldn't tell you how much ore they shipped at that time from this property. They had an open cut mine there. It wasn't very deep at that time. I am not sure how long they operated there; I think about a year. I don't know how much ore they shipped or anything about the quality of the ore. I don't think they sunk any shafts there. They were hauling out with horses and cars and dumping into cars. They didn't exhaust the ore; there is some ore there yet.

Q. Now passing down on section 7 to what is called the Himrod property, being the north half of the southeast quarter of 7, directly north of the Chicago mine, about which you have testified, taking the west one of those forties, are you familiar with that ground?

A. Which forty is that?

Q. It would be the northwest quarter of the southeast quarter.
A. Oh, yes; that adjoins the rolling mill.
Q. Yes, adjoining the rolling mill; are you familiar with that?
A. I have seen the work they have done there. I seen it when they were doing it.
Q. Do you know where the shaft is located up in the corner towards the rolling mill in the west one of those forties?
A. Yes, sir.

Mr. HAYDEN: Each one of these questions is leading, and tells him just what to say. I object to it.

I don't know who put that shaft down. I think the man
237 that had charge was Captain Hurd. It must have been done in the 70's. I understood the Himrod Co. were his principals.

Mr. HAYDEN: I object to that, the same objection.

I don't think they ever sunk any shaft. They had a big open pit that they hauled ore from. I think they shipped ore from it. I wouldn't be positive about that. There is a big stockpile there yet. It is a low grade ore. There is no machinery there that I know of. I sunk a shaft in that pit in the 80's. The shaft is about 35 or 40 feet deep, and then we sunk another shaft below that, down near the road, on the same 40. Sweeney, Newberger and myself did that. In the first shaft we had a kind of blackish looking ore, with some manganese in it. I never had it assayed that I remember of and never shipped any of it. The Pioneer Iron Co. made no claim about that land during the time I was engaged there. (Same objection.) The next 40 east of that, the other Himrod 40, is the one where this big pit is.
Q. What part or the 40 is that shaft on?
A. Pretty near, I should say, about the middle of the 40, that is east and west and near the north line.
Q. Which way is it from the open pit we have just spoken of, east or west?
A. East. Ed Sweeney and Isaac Newberger of Marquette were interested with me in sinking this pit in the 80's. The ore there was a lean ore; we never shipped any of it, nor did any crosscutting. We didn't timber the shaft. The ground stands without timbering. We had a little timber in the collar of the shaft to keep the surface from caving in. I don't know how much it cost.

Mr. HAYDEN: That is objected to as incompetent.

I should say that shaft cost somewhere in the neighborhood
238 of $8 or $10 a foot. (Same objection.) During the time we were prosecuting that work the Pioneer Iron Co. didn't make any claim about owning any interest in it. This Himrod Co. that I was speaking about did a little work before this. They dug the open pit I have spoken of. I don't think they had another shaft on the other side of the railway track about due east of the shaft I have

just testified to. The pit wasn't very large. They had some ore there. I don't think they shipped any ore from there. I don't know about that. I don't think they had any machinery there. This was opened by the Himrod Co. and a man by the name of Wise from Green Bay. There is an open pit south and east, close to the road, and close to a little house that stands there now. (Same objection.) I think Mr. Wise at Green Bay opened that pit. I had nothing to do with it. There must have been somewhere in the neighborhood of seven or eight thousand tons of stuff taken out of there of some kind; I don't know what it was. I think they found some ore there. There is a little stockpile on the road yet from that pit. It was a low grade ore. That pit was probably opened in the 70's. I don't remember any further improvement on that 40. Upon the northwest quarter of the southwest quarter of 7 some exploratory work was done by Adams and Foley. I don't remember any done by anybody else. We sunk probably three dozen test pits there, not very deep, 20 or 25 feet were the deepest. We discovered nothing of importance. I couldn't tell how much money we spent on that 40. It would be probably worth a dollar a foot.

Mr. HOYT: Same objection.

I don't think there was any over 40 feet. The Pioneer Iron Co. never interfered with me on any of these lands. Neeley and Sweeney did exploratory work on the New York Hematite forties on section 6, the southeast quarter of the southwest quarter before I bought it of them. They sunk a test pit or shaft about 30 feet deep probably.

239 Mr. HAYDEN: I object to that as incompetent and irrelevant.

That is the shaft the Cleveland Cliffs went into. Two hundred feet from that pit a man by the name of Fitzsimmons found a body of ore right alongside of where the track is now. That was at the time we bought the property when they had that ore. There was a nice body of ore, about 20 cars.

Q. Where was the Grand Central pit?

A. It was very fine ore. It was 57 per cent. in metallic iron and .022 phosphates. The Grand Central pit was on the west side, near the west line of the New York Hematite—the west 40. I don't know who first made that exploration. There was quite a pit there. We shipped some ore from there, Adams & Foley, out of the same pit, the Grand Central pit. The ore wasn't very good, a low grade ore. We didn't exhaust the ore. Mr. Anthony sunk a shaft east of that New York Hematite pit, and down a little below close to where the L. S. & I. Ry. is now. He had a pit there about 40 or 50 feet deep. It was a test pit. He had lean ore there; some looked pretty good. That was before Neeley & Sweeney's time. There were some other pits on the hill above those open pits. I don't remember who did that. There are two or three pits there,

two middling big ones. That is the extent of the exploring done on the west Hematite 40, and aside from what I and my associates have done. As to the east New York Hematite, Sweeney & Neeley did some work there before me.

Mr. HAYDEN: The same objection to that.

And a man by the name of Marchetti did some work there. He went in and drove drifts or crosscut there. (Same objection.) The Cleveland Cliffs sunk a shaft there since within the last year
240 or so. That is all I know of having been done on that 40. I am somewhat familiar with what is known as the Bay State or Green Bay 40's. I sunk a shaft on what was called then the Bay State. It is pretty near the line, I think, the line between what is called the Tracy 40 and the Bay State or Green Bay. I sunk a shaft and took out a pile of ore there. The ore is there yet. I have done some work upon the north 40, northwest quarter of northwest quarter of section 8. I did some work on top of the hill also. I had an open cut there and some test pits. (Same objection.) Mr. Breitung owned the land; we opened quite a pit. We had a body of ore on the surface. Mr. Allen, I think, had started that pit before we went there. We never shipped any ore from there. (Same objection.) On the south one of those two forties, the southwest quarter of the northwest quarter of section 8, a company composed of Adams and Foley and Gregory and Blake and Allen sunk the Bay State shaft in the 80's. They had an open pit there probably 8 or 10 feet deep, and I think I sunk a shaft about 12 feet. The quality of the ore was somewhere in the neighborhood of 51 and 52 per cent. We probably took out four or five hundred tons and put it in stock. It is there yet. Mr. Breitung was the fee-owner of the property at that time.

Mr. HAYDEN: The same objection.

A Green Bay party had done some exploratory work on the 40 before we went there in the early 70's.

Mr. HAYDEN: I object to that as a guess.

They did a lot of foolish work. They started to open a mine right out of a bluff, regardless of what was there. They did a large amount of work. I think they sold some of that ore. Captain Merry sold it for them. I don't know how much they ship-ed. It cost us a good deal of money to put in our shaft and make
241 explorations there. Somewhere about $25 a foot, I think. (Same objection.) It is pretty hard for me to tell how much. It must be somewhere about five or six thousand dollars, I should say in that neighborhood.

Mr. HOYT: I object to that, same objection.

Pettybone, Day and Fitzsimmons sunk what they called the old Green Bay pit, a pretty large open pit, in the 70's on that 40. They

shipped some ore. I don't know how much. They didn't exhaust the ore, the pit is there yet. The people who went down there about the first of January, 1900, have driven a drift in there, in that big open pit I was speaking about. I disremember now how far they have driven the drift. I should say 45 or 50 feet. They have a lean ore in that drift, the same as was in the open pit. They have a diamond drillhole in the lower part of that 40. I don't remember any further explorations on that 40 of which we have not yet spoken. I know something, not a great deal, about what is called the North Tracy 40, which would be the northeast quarter of northwest quarter of section 8. I started a test pit where the Cleveland Cliffs people since then have started a shaft. That test pit is south of the Chicago & Northwestern railway, over 300 feet. I don't hardly think it would be near the center of the 40. The test pit wasn't very deep. I don't think we had that down over 15 or 16 feet. These parties, who are now claimed to be trespassing upon this land, took possession of this test pit somewhere after New Year's in 1900, I think. We had a kind of lean ore there. They have a diamond drill there in the shaft. They may have found something with that. I think that is the only diamond drill on the 40. They have put a diamond drillhole near the northeast corner of that 40, south of the Queen. I know something of the southeast quarter of
242 the northwest quarter of section 8, what is known as the South Tracy 40. If I remember right, I think Mr. Wadsworth of Ishpeming and Mr. Tracy did some work over there in the 80's. I didn't pay much attention to it. I don't think there was any ore ever shipped from there.

Q. What is the quality of ore over there, if you know?

A. Well, a little further south and east from there was a pit that there was some ore hauled out of.

Q. Where was that ore hauled to?

A. I think it was hauled to the railroad. They had a track running in there.

Q. Whether or not it was shipped away in the cars?

A. I don't know how much. I think they shipped a little from there.

Q. I will ask you whether they exhausted the ore, if you know?

A. Well, there is that same kind of ore sticking up yet. I think they shipped a little ore from there. I don't know much about the Lonstorf 40, which is the northwest quarter of the southwest quarter of section 8, lying directly west of the brickyard 40. I was there when Lonstorf was doing some work there sinking test pits. I think it was in the 70's. I don't know how many test pits he sank. I have seen two there. One was about 40 feet deep and the other wasn't very deep. I don't think they had any ore. I have been over the 40 immediately south of the one I have just been talking about with Mr. Maas, J. B. Maas. I drove him out there several times. He was sinking a shaft there in the 90's, if I remember right. It is pretty hard to remember all these things. I don't

know how much of a shaft he sank there, only what I was told, that they had a shaft over 100 feet.

Mr. HOYT: We move that that answer be stricken out.

243 He was finding a lean ore in that shaft. I don't think he shipped any ore from that shaft. There are some stockpiles; I couldn't tell how much.

Q. Do you know anything about their driving crosscuts?

A. There may be two or three hundred tons in stock, or more.

Q. Do you know who drove any crosscuts, or whether he did, or did any mining there?

A. I heard he drove one drift: I don't know what you call it. Miners up there call it a horseshoe drift. It is a drift from the shaft and comes around to it again. On this 40 also he had an open pit close by where this shaft was. They had a drift pretty near the surface and took some ore out of it. It was a lean ore. I don't know whether they ever shipped any ore from there or not.

Q. What, in your judgment, would be the expense of sinking such a shaft as you saw sunk there, per foot?

Mr. HOYT: I object to the question as improper, incompetent and immaterial. The witness has not testified as to having been down the shaft.

A. Oh, somewhere from $25 to $30 a foot. They had some machinery there, a little hoist and a pump or two. I don't remember of any other exploratory work being done on the 40. I don't know much about the 80 which lies just west of the Chicago exploration and south of the Wheeling and Jefferson, being the south half of the southwest quarter of section 7. Mr. Swineford and others had an option upon it at one time, and I have been over there where they were working. On the two forties known as the Snider forties, being the north half of the northeast quarter of section 8, some parties from Minneapolis, I think, have done some work. It must be the west 40. That was done a good while ago, I think in the 70's.

244 They sunk a couple of shafts. I think in the neighborhood of 85 or 90 feet deep. I don't know what they found. There was a little boiler there. I don't know whether the shafts were timbered. I don't think they were timbered all the way down. It would be hard for me to judge what it would be worth to sink those shafts. It might cost $35 or $40 a foot, and some of the ground looks soft enough to cost $20 a foot. It is pretty hard to tell by the dirt that came out. There was some work done on the other 40, the east one of these two forties, in the 70's, I think. Quite a long open cut, or crosscut we used to call them, was made there. It must have been a hundred feet long or more. In some places 8 or 10 feet deep and some places a foot, 2 feet and so on. It didn't develop any ore that I know of. That is the only work done on that 40 that I remember. Upon the forties lying south of these two I have been testifying to—south half of the northeast quarter of section 8—some

work was done alongside the county road upon the sou-h 40, I guess. That would be the west 40. There was considerable work there by different parties. I sunk one or two test pits. It is pretty hard for me to tell when I did this work. I think it was in the 80's though.

Mr. HAYDEN: The same objection.

We sunk a couple of test pits probably 20 feet, or such a matter, I don't remember now exactly. We got into water and didn't go very deep. Before I sunk these test pits George Cortland done some work there. He sunk a number of test pits. He had a little lean ore at one time. On one day he asked me to go down with him to look at them, but I didn't think much of them. I think it was float ore. I didn't find anything but slate. I don't remember of any other work done on the 40. I have been over the east one of those two
245 forties. I think, if I remember right, Charley Muck and others did some work down there. I couldn't tell you when exactly. It may be the forepart of the 80's they sunk a shaft. I couldn't tell you how deep. From the debris that came out of the shaft I should judge the shaft to be 50 or 60 feet deep, I didn't see any ore. That is all the exploratory work that I remember being done on that 40. I remember doing a little work on the north half of the southeast quarter of section 8, just south of these two forties we have been talking about last—on the one next to the brickyard, near the west line. We sunk some test pits, two or three; that was in the 80's. We didn't sink them very deep; we discovered slate. It didn't cost much, probably a week's work for a couple of men. I think it was east of that Major Brooks did some work at one time in 1868 and 1869, somewhere thereabouts. He drove a crosscut, an undergound crosscut, on the ledge. The ledge started and raised up the hill and he started at the base of the hill and tried to follow the ledge right up. I don't know how far he drove that; I don't think he found any ore. I don't remember of any other exploratory work on that 40. I have been on section 5, what is called the Lucky Star mine, being a part of the northwest quarter of the southwest quarter of section 5. I never did any exploratory work on that. Work was done there by others. Two shafts were there. I think Ishpeming men sunk those shafts in the 80's. I couldn't tell you how deep those shafts are. One of them appears to be pretty deep. Judging from the debris that came out of it I should say one is 100 feet deep or more and the other is not so deep, 30 or 40 feet deep. I should think they were sunk as test shafts, looking for ore. They found ore, I don't know the grade. I don't know whether any ore was shipped from these shafts, nor how much these shafts ought to cost to sink them. This same
246 Ishpeming party put a drillhole there, but I couldn't tell just where it was. That was at the same time they sunk the shafts. I don't know how deep they put it, nor what they discovered in it. I don't know what other or further work was done upon that tract. I don't think these people who claim to represent the

Pioneer Iron Co. have done any work there within the last year and a half; I didn't see any. There was a shaft called the Bunker Hill shaft, sunk on what is known as lots one and two of the Harvey lots, situated in the southwest quarter of section 6. I think that was sunk in the 80's. Captain Samuel Mitchell, I think, sank it. I couldn't tell you how deep it was sunk. No ore was ever shipped from the shaft that I know of. I have been over the fractional southwest quarter of the southwest quarter of section 5, 47–26, commonly known as the Blue mine. I think Nate Kaufman and others did some exploratory work there in the 80's. They tried to sink a couple of shafts there, but didn't get down very far. The water came in so fast they couldn't take care of it. I guess they abandoned the shafts then. I have been at the Blue mine that has since been developed upon that property. I think Captain Samuel Mitchell and others developed that mine. I don't know when that was done. I guess it was in 1882; it might have been in the 90's that work was done there. I am not sure about that. They sunk shafts there, I don't know how much ore they shipped. I don't know how much of a mine they developed there. As to the history of the mine known as the Queen, I knew that Ed Lobb had an option and found ore there. I guess that was in the 90's. It appeared to be a pretty big mine they developed there, from the shipments. I don't remember how much ore they have shipped. I don't know the grade or quality of the ore; they call it a non-Bessemer. I think there are buildings on these two mines.

247 Mr. HOYT: That is objected to as incompetent and immaterial.

They have got an office there and they have got a big shaft and tramroad, railroad, etc., shafthouse and engine house. I don't know as I know much about the machinery. It must be pretty heavy machinery. I am told they hoist a three-ton skip. I don't know how much they raise per day out of the mine. I have not made any inquiries about it. I couldn't make any kind of an estimate as to the value of permanent improvements at the Queen mine without going over it. I couldn't any more than guess of the value of the improvements at the Blue mine without going over it and estimating it. I have been at the Prince of Wales mine, located upon a part of the northeast quarter of the southwest quarter of section 5. I think there is a mine. I have seen hoisting ore there now and then. I think the property was first explored by Mr. Lobb and Mr. Anthony and others—Mr. Kline, in the 90's I guess at the time the Queen was found. I couldn't tell you as to the extent of the improvement- and value of them. There is quite extensive improvements there. I think William Anderson and Charles Sundberg made explorations at the South Buffalo mine, which is situated on the southwest quarter of the southeast quarter of section 5. They developed a mine there. I don't know anything about the extent of the improvements upon that. I don't think there are many im-

provements on that now. I think it is all taken off. They sold the mine. I have seen the work that has been done on the northwest quarter of the southwest quarter of section 5, known as the Buffalo mine. They have been hoisting ore from there right along. I don't know as they are hoisting there now. I don't know anything about the value or extent of the improvements upon the
248 property. When I came to Negaunee first in 1867 I took a contract from the Iron Cliffs Co. to cut 2000 cords of wood on section 12–47–27 and deliver it on the bank of the pioneer furnace.

Mr. HAYDEN: I object to that as irrelevant testimony.

Section 12 belongs to the Iron Cliffs Co. I did a little brick work in the blacksmiih shop in lining up with brick on the inside at the Pioneer furnace. Took the contract from Major Brooks.

Q. What company?

A. The Iron Cliffs Company.

Mr. HAYDEN: I object to that as incompetent?

This wood that I contracted to cut was to be used in the kilns at the Pioneer furnace, to be burned into charcoal there. I took this contract from Major Brooks of the Iron Cliffs Co. I had that 2000 cords of wood cut and paid for cutting it. The Iron Cliffs Co. paid for the cutting. They used the wood at the furnace, put it into the kilns and made coal with it and use it in the Pioneer furnace in the production of charcoal pig iron. Alexander Maitland was the engineer of the Pioneer Iron Co. at that time, and pointed out to me where the wood was which I was to cut.

Mr. HAYDEN: I object to that as incompetent.

Q. Who signed the contract for and on behalf of the Iron Cliffs Co. to cut this wood for the furnace?

Mr. HAYDEN: I object to the question unless the contract itself is produced.

A. Major Brooks, I think. I haven't that contract with me. I don't know what became of it. I didn't take any care of it. It was a written contract. I don't know where it is. I had other dealings with the Iron Cliffs Co.

Mr. HOYT: The same objection is continued.

I hauled iron ore from the Pioneer mine to the Pioneer furnace. I think in 1869, after I finished my wood contract. The Iron Cliffs Co. paid me for that work.

249 Mr. HOYT: Same objection continued.

I also hauled for a short time coal from Ishpeming, about three miles, and then called the Burt mine or Lake Superior mine. I hauled charcoal to the Pioneer furnace. I don't know what brand

was put on this pig iron that was produced at the Pioneer furnace. I had dealing with the Iron Cliffs Co. about three years ago.

Mr. HOYT: Same objection continued.

I took a contract on the cinder pile, to pick it over to get the scrap iron out of it. That was the cinder pile east of the Pioneer furnace. I took that contract from Mr. Mather and Mr. Redfern.

Q. Whom did they represent in making that contract?

Mr. HAYDEN: I object to that as incompetent and irrelevant.

Mr. HOYT: And improper.

A. The Iron Cliffs Co.

Q. Have you searched for that contract?

Mr. HOYT: That is objected to as incompetent and the question is improper.

A. I did look for that contract. It was a written contract; I didn't find it. It was signed by Mr. Mather and Mr. Redfern, I think.

HAYDEN: That is objected to as incompetent.

Q. Did the Iron Cliffs Co.'s name appear or not?

Mr. HAYDEN: I object to that as incompetent, irrelevant and improper.

COURT: There is no use of putting in evidence that we cannot consider; if this contract is in existence, you should have given notice to produce it.

Mr. SHAULL:

Q. Have they got the contract?

A. They have got a copy of the contract. I have not been a resident of Negaunee during all these years since 1867. I went
250 back to Houghton one winter and got back in the spring. I took a contract up there at Calumet or rather Schoolcraft, and came back in the spring, and in the year 1870 I went to Utah. I was away altogether at that time about a year. With those exceptions I have been a resident there all that time. I am somewhat familiar with such mining operations as have been conducted in and around Negaunee since I came there in 1867.

Q. You may state whether you knew of the Pioneer Iron Co. operating during that time?

Mr. HAYDEN: I object to that as incompetent.

A. No, sir.

Q. Did you ever hear of their running the Pioneer furnace there any from that time to the present time?

Mr. HOYT: Same objection.

A. No, sir. Major Brooks was running the furnace. (Same ob-

jection.) I remember the operation of the so-called Pioneer-Bessemer mine on section 4, 47–26, in the city of Negaunee. That must have been in the 90's. I am not sure just what year it was that they were working there. I supposed the Iron Cliffs Co. operated that mine. I went there one day with Mr. Maitland.

Mr. HAYDEN: I object to that as incompetent and move to strike out the answer as incompetent.

I heard the ore was being used at the Pioneer furnace. (Same objection.)

Cross-examination by Mr. HAYDEN:

I am employed by Mr. Breitung; have been so employed over a year. It was the intention to commence operations on Breitung's properties; I was to superintend. I have not been working the property during the employment. I have been driving around the property, looking after it. We were to go to work, but they decided not to go after the Cliffs Co. started. We were figuring to go
251 to work a year ago last January; that is what we figured on. We didn't go to work. In the meantime I was driving around on their properties looking after the properties. I have looked up testimony in this case; that is, I was told to try and find men who would know something about this case. I have looked up men that were supposed to give testimony. I have not paid any money to any of the witnesses to come down here. I didn't make any agreement with any of them. I haven't talked with them in reference to their testimony or what they were to say.

Q. How did you know they would be witnesses?

A. Well, I know that they lived here in those years and supposed they would know something about it.

Q. You have picked up witnesses upon a mere supposition, without talking with them at all, did you?

A. Yes, sir. I hauled some ore from the old Pioneer in 1869 to the furnace. I think it was the year of 1869.

Q. Who was it that paid you?

A. The Iron Cliffs Co.

Q. How do you know it was the Iron Cliffs Co.?

A. The agent hired me and the clerk paid me.

Q. Who was the agent who hired you?

A. Major Brooks, I think, I am not sure. But it was Mr. Isham who hired me for hauling the ore.

Q. Who was the clerk who paid you?

A. Wm. Rowland.

Q. Paid you cash?

A. Well, yes; part greenbacks and part iron money. They always paid in cash in those days. They had iron money; they called it cash. There was all sorts of iron money floating around the country at that time; a good many Iron Cliffs Co. bills. They paid me some

greenbacks. The Iron Cliffs Co. bills, Lake Superior bills and Jackson bills were in the hands of everybody, circulated as money at that time.

252 Q. Did you know at that time that Major Brooks wasn't employed by the Pioneer Iron Co. also?

A. No.

Q. You don't know whether he was or not, do you?

A. I didn't know.

Q. You don't know whether Pioneer Iron Co. furnished the money or a part of the money for payment to you for what you did, do you?

A. No, sir, I don't know that. I had no means of knowing it.

Q. You knew there was a Pioneer Iron Co. in those days, did you not?

A. I didn't know only from hearsay.

Q. You knew there was an Iron Cliffs Co. also from hearsay?

A. Yes, sir.

Q. Did you read the articles of organization of either company in those days?

A. No, sir.

Q. All you knew about either company was hearsay, wasn't it?

A. All I knew about it, I worked for them and they paid me.

Q. You worked for the men who hired you?

A. They hired me for the Iron Cliffs Co.

Q. Did the president of the company hire you or the manager?

A. Major Brooks hired me on the wood.

Q. You were paid in cash.

A. Yes.

Q. How can you say that Major Brooks wasn't acting for the Pioneer Iron Co. also?

A. I couldn't say that.

Q. When was this you hauled charcoal from section 12 to the furnace?

253 Mr. SHAULL: He didn't say that he did.
COURT: He cut wood on section 12.

A. I commenced that in 1867. The Iron Cliffs Co. paid me for that. I know they paid me, because I went to the office and got my money from them. I went to the Iron Cliffs office in Negaunee. I don't know that that was also the office of the Pioneer Iron Co. I was paid in money. Major Brooks was the manager or agent of the company who hired me. All I know about it is that Major Brooks hired me and he was the manager for the Iron Cliffs Co. at that time. That is about the extent of my knowledge on the subject. I don't know whether Major Brooks charged the cost of my work to the Iron Cliffs Co. or the Pioneer. I bought a lot from the Pioneer Iron Co. in Negaunee.

Q. When was that?

A. I bought it from the Iron Cliffs Co. and one of the officers of the company signed the deed.

Q. Well, you bought it from the Pioneer Iron Co., didn't you? You got your title from the Pioneer, didn't you?
A. The Iron Cliffs Co. deducted it out of my money.
Q. What money?
A. Money I earned hauling wood.
Q. From section 12?
A. From section 12, yes, sir.
Q. You have already said you didn't know whose money that was. You got a deed from the Pioneer Iron Co., didn't you?
A. I think my deed is from the Pioneer Iron Co. I know it is.
Q. What was the year?
A. 1869. I have got the deed.

In addition to these jobs I have stated, I lined up the
254 blacksmith shop with brick on the inside for the Pioneer Iron Company in 1868, I think. Major Brooks got me to do it and paid for it in money. I guess I did no other jobs for them. I think Mr. Isham hired me to haul charcoal from the Excelsior kilns. I think the last of these explorations I have told about was conducted in 1888. The first exploration was conducted by me in the seventies. I should say somewhere about 1878. The first exploration in 1878 was conducted by me on what is now called the Davis. If I remember right, that is the S. W. ¼ of the N. W. ¼ of section 7, 47–26. It was not the S. E. ¼ of the N. W. ¼. I had an option from Mr. Breitung to conduct that exploration. I think we got a lease later on. That is my option was a verbal one, it wasn't in writing at all. I asked Mr. Breitung for an option to go on there. He said All right, go on and prospect for iron ore. He promised to give me a lease if I found some ore. I think we got a lease at the time we sold to a Grand Rapids party. We got a lease and sold it. We operated it on and off for several years. I haven't got that lease. It ran to J. Q. Adams, J. F. Foley and E. C. Anthony. I couldn't tell you whether it was ever recorded. Mr. Adams attended to that part of the business. The terms of that lease were that we were to pay 50 cents a ton royalty on the ore we sold for less than $3.00 at the mine in the car.

Q. I don't care for that, I ask you the direct question: Was there not a provision in that lease making the right also subject to the reservations in the lease from James L. Reynolds to Mr. Breitung?
A. I don't know.
Q. Of February 1, 1871?
A. I don't know.
Q. You don't know?
A. No.
255 Q. What became of the property; is it now operating?
A. No, sir.
Q. How long ago did it cease operating?
A. That I couldn't say.

COURT: Subject to the terms of a lease from Reynolds to Breitung?

Mr. HOYT: Yes, sir; all these conveyances were made that way. We will show that.

Mr. HAYDEN:

Q. Did it cease as early as 1885, for example?

A. I think later than that. I don't know. I guess it must have been working in the 90's the Davis people.

Q. You merely guess at it?

A. Yes; I don't know. I don't claim to remember that time.

Q. Wasn't it a matter of general knowledge that the Pioneer Iron Company had an interest there, and didn't Mr. Breitung talk with you about it?

A. No, sir. I didn't know anything about that.

Q. You were not the lessee, then, but only an employé of the lessee, as I understand it?

A. I got the option myself individually and then took Mr. Adams in, and took others in before—Mr. Adams at different times.

Q. Were you a party to the lease?

A. I think I was. I got part of the money when we sold it.

Q. Do you know where that lease is?

A. No, sir, Mr. Adams attended to that part of it; I only looked after the mining part.

I didn't keep possession of the papers. Mr. Adams kept all the papers and kept all accounts. As to the negotiation of the terms of the lease, Mr. Breitung, I think, told me what the royalty
256 was, and that is all I know about it. He just told me about it, he didn't give me a written option when I got the property. I think Mr. Breitung died in 1887 or 1888, somewhere around there. I don't recollect why the Davis people or the Grand Rapids people stopped working. The next property I had connection with was what is now called the Milwaukee, the next property east. I worked on that property in 1880, 1881, 1883, 1884, I think. I had an option. It was in writing. I don't know where that option is now. There never was a lease granted on that option. I started work on the option, and I got an option from J. W. Shad, a sub-option.

Q. You got whatever Shad had obtained from Mr. Breitung, whatever it was?

A. Shad had four forties from Mr. Breitung; this was the south one.

Q. Did you know what the papers were that Shad had?

A. No, sir.

Q. Was there ever afterwards a lease granted?

A. Yes, sir.

Q. When was that lease granted?

A. I think in 1881.

Q. Who was it given to?

A. We must have turned it over.

Q. Who was the lease given to?

A. Adams and Foley.

Q. Wasn't it given to the Milwaukee Company?

A. No, sir. Well, it might have been later.

We sold it to the Milwaukee Company, the Milwaukee Iron Company. They conducted operations under it. I might have signed the lease, but I don't know as I read it over. I think the lease was given by Adams and Foley to the Milwaukee Company. I am not sure that Mr. Breitung didn't give the lease direct to the Milwaukee Iron Company. I think it was in 1881 that the lease was given.

We sold to the Milwaukee Iron Company in 1881.

257 Q. And, therefore, you think the lease was given in 1881? That is the reason why you think so? Didn't that lease contain a provision like this: "This lease is subject to all the provisions and reservations in the lease from James L. Reynolds to Edward Breitung, dated February 1, 1871?"

A. I don't know about that.

Q. You would not swear that it wasn't made so?

A. No.

Q. Did you ever see the lease?

A. I think I have seen it.

Q. What was the description of the Milwaukee?

A. That, I think, was the S. E. ¼ of the N. W. ¼ of section 7. It is hard for me to remember all these descriptions.

Mr. HAYDEN: For the purpose of further cross-examination, I offer in evidence the record of a lease from Edward Breitung to the Milwaukee Iron Mining Company, dated December 1, 1883, recorded on pages 210, 211, 212, 213 of Liber 4 Miscellaneous Records for the county of Marquette, on July 2, 1884.

Mr. ELDREDGE: That is objected to as irrelevant and immaterial.

Paper received in evidence and marked, Defendants' Exhibit 01, and is as follows:

This indenture, made this first day of December, A. D. 1883, one thousand eight hundred and eighty-three, between Edward Breitung of Negaunee, Michigan, party of the first part, and the Milwaukee Iron Mining Company, a corporation organized and existing under the laws of the State of Michigan, party of the second part.

Witnesseth, that the said party of the first part, for and in consideration of the rents, covenants, and agreements hereinafter

258 mentioned, reserved and contained, on the part and behalf of the party of the second part to be kept and performed, doth grant and convey unto the party of the second part, and to its successors and assigns, the right of entering in and upon the lands hereinafter described for the purpose of searching for and of mining iron ore for the term of eight years from the first day of October, A. D. one thousand, eight hundred and eighty-three.

The said lands are situated in the county of Marquette and State of Michigan, and are known and described as follows: The southeast quarter of the northwest quarter of section 7, township 47 north, range 26 west, except 200 feet off the north side of same.

And the said party of the second part hereby agrees to pay royalty unto said party of the first part as follows: Upon all ores mined under this lease for which the selling price delivered on the railroad cars at the mine shall be less than $3 a ton, said party of the second part shall pay said party of the first part 33⅓c. a ton royalty; and upon all ore mined under this lease for which the selling price delivered on the railroad cars at the mine shall be $3 and upwards a ton, said party of the second part shall pay said party of the first part 50c. a ton royalty. It is agreed that settlement shall be made between the parties hereto on the first day of each and every month of the term of this lease, commencing December 1, 1883; and in such settlements, said party of the second part shall furnish said first party verified statements of the number of tons of iron ore mined and shipped, sold or used, or taken from the premises during the month preceding the said time of settlement, and payments shall be made at such time for all ore mined or shipped or used or taken from the premises during the month preceding the said time of settlement, according to the terms of royalty above specified and agreed upon. The verified statement to be furnished shall also state the selling price of all ore mined, delivered on the cars at the mine, or
259 otherwise delivered, so that it may be determined from such statements at what rate of royalty said ore shall be paid for.

It is further agreed that this lease may be terminated by said party of the first part at any time within six months after any December 1st, in case the production of iron ore during the twelve months ending at said date and on which royalty is payable shall not exceed 5,000 tons. Notice of such election for the termination of this lease shall be given to said party of the second part, and this lease shall thereupon terminate in sixty days after such notice. Provided, however, that if the production of any year upon which royalty is payable shall fall short of 5,000 tons, said party of the second part may save a forfeiture by paying the royalty upon that amount within the said sixty days after receiving said notice, and said second party shall be entitled to mine in succeeding years without paying royalty thereupon as many tons as it shall have paid royalty upon without having mined the same in former years. But this shall only be done in case it shall during each succeeding year also mine in addition to or pay royalty on said minimum amount of 5,000 tons of iron ore each and every year of this lease after December 1, 1883. In case said party of the second part shall incur a forfeiture, or in case this lease shall terminate in any manner, said second party shall remain liable for all dues and royalty accrued prior to the surrender of full possession of said lands to said party of the first part, and if the said second party, or any person or corporation shall remain in possession of said land, or any part thereof, after the termination of said lease by forfeiture, or lapse of time, said party of the first part may re-enter without process of law and expel and remove said party of the second part and all other occu-

pants of said premises, and may hold said premises as in his first and former estate.

The said party of the second part agrees to pay all taxes, general and specific, upon said land, and upon all ore mined from
260 said land hereafter to be assessed thereon. Failure to pay royalty for sixty days after due, or any taxes for thirty days after due, shall render this lease void and of no effect at the option of the first party.

This lease is given and made subject to all the reservations contained and mentioned in the lease of said land from C. T. Harvey to Edward Breitung, dated February 1, A. D. 1871, and executed and acknowledged September 19, A. D. 1871, and in the lease of said land from C. T. Harvey to said Breitung, dated October 24, 1870, and in the lease of said land from James L. Reynolds to said Breitung, dated February 1, 1871. The said leases are recorded in the office of the register of deeds of said county of Marquette, and reference is hereby particularly made to said leases as to the reservations contained in the same.

The said party of the first part lets and demises said land to said party of the second part for mining purposes only. Said party of the second part has the right to erect such buildings and machinery upon said land, and to lay such railroad tracks and tramways as may be necessary for those purposes only, and no others. Said lands shall not be used for iron smelting purposes.

In witness whereof, etc.

(Signed) EDWARD BREITUNG. [SEAL.]
MILWAUKEE IRON MINING COMPANY,
By HARVEY H. BROWN, *President.*
W. E. STONE, *Secretary.*
[CORPORATE SEAL.]

Witnessed and acknowledged.

Mr. HAYDEN: I read, for the purpose of this examination, a clause in this lease as follows: "This lease is given and made subject to all the reservations contained and mentioned in a lease of said land from C. T. Harvey to Edward Breitung, dated February 1, 1871, and executed and acknowledged September 19, A. D. 1871, and in
a lease of said land from said C. T. Harvey to said Breitung
261 dated October 4, 1870, and in a lease of said land from James L. Reynolds to said Breitung, dated February 1, 1871."

Mr. HAYDEN: I now offer in evidence the record of the lease from C. T. Harvey to Edward Breitung, dated February 1, 1871, recorded in Liber 1 of Miscellaneous Records, pages 363–4, and the record of a lease from James L. Reynolds to Edward Breitung, dated February 1, 1871, and recorded in Liber 1 of Miscellaneous Records at page 319 and following pages.

Papers received in evidence and marked Defendants' Exhibits 02–3 and are as follows:

DEFENDANTS' EXHIBIT 02.

This indenture, made February 1st, A. D. 1871, between Charles T. Harvey of Tarrytown, Westchester county, New York, party of the first part, and Edward Breitung of Negaunee, Marquette county, Michigan, of the second part.

Witnesseth, whereas, said Harvey leased to said Breitung by an instrument dated October 12, 1870, and recorded in Marquette county, Michigan, on pages 276 and 277 of Miscellaneous Records, for the term of fifteen years from October 1, 1870, the following lands in said county, to-wit: So much of the southeast quarter of the southwest quarter and south one-half of southeast one-quarter of section 6 as lies more than 200 feet south of the present track or tracks of the Pennsylvania division of the Chicago & North-Western railway. Also all of section 7, except the west one-half of northwest one-quarter and south one-half of northeast one-quarter of said section. Also the west one-half of the west one-half of section 8, excepting 150 feet on each side of said railway, measuring from the center of the same. All in township 47 north, of range 26 west, reference being hereby made to said lease for a particular statement of the terms thereof. And,

Whereas, said lease provided that said Breitung might add to his lease any mineral lands of said Harvey in said section 8, on
262 the same terms, by giving notice prior to January 1, 1872, which notice has been given:

NOW THEREFORE, this indenture is made in fulfillment of said lease and as supplementary and amendatory thereof, and is to supersede and qualify said former lease, and to take the place thereof; provided, however, that as against any person or persons acquiring said Harvey's title, or any part thereof, under any lien, conveyance or proceeding, subsequent to the first lease and prior to this lease, said Breitung at his election shall be relegated to all his rights under said prior lease. Said Harvey hereby lets and demises to said Breitung all the lands in section 6, 7 and 8 above described, and also all of the remainder of section 8 aforesaid, and so much of the southwest ¼ of the southwest ¼ of section 5 as lies more than 200 feet north and south of the present track of said railway in same township and range, making an additional area of about 600 acres more or less, for the term of fifteen years from the first day of October last (1870). Excepting, however, and reserving to said Harvey, his heirs or assigns, so much of section 8 as lies within 200 feet on either side from the center of the track or tracks of said railway. Also the building owned by said Harvey on section 6, with sufficient area for its suitable occupancy. Also such surface rights as may have been contracted or conveyed to Gotleib Sporley, or his legal representatives, in northeast ¼ of southwest ¼ of said section 8. Also all the standing timber on the premises hereby leased, with right of removal

of the same at any time before the same may be in the way of actual mining operations on the premises. Also the right of said Harvey or assigns to select and use any locality, yielding clay for brick, and to manufacture same on the premises, so far as it may be done without interfering with actual ore mining operations of said Breitung beneath the surface of such brick-making premises. Also the right of said Harvey to grant the right of way on any of said prem-
263 ises to any new railway or tramway tending to increase transit facilities for transport of ore from said premises, and said Breitung will conduct mining operations below the surface, so as not to interfere with the roadway and structure of such railway or tramway upon the surface.

Said Breitung agrees to permit the Pioneer Iron Co. or its successors, to use such mining rights as it possesses under a certain permit or conveyance from said Harvey, dated September 17, 1857, and recorded same day in Book M. R., page 94, in Marquette county. And this lease is made subject to said mining rights of said company. Said Breitung also agrees to satisfy all claims of James L. Reynolds for any interest he may have in the mineral mined on said premises, so as to leave the payments herein specified as belonging solely to said Harvey for the lease of his individual interests. Said Harvey lets and demises said lands to said Breitung for mining purposes, and also for general occupancy, except for iron smelting purposes, and the possession of said Breitung as against said Harvey is intended to be exclusive except so far as exceptions are herein stated. This lease shall bind the heirs and legal representatives of the respective parties. Said Breitung, his heirs and legal representatives, shall be bound for all his covenants herein, notwithstanding any sub-lease or assignment of his interest, or of any part thereof. In consideration of said letting, said Breitung agrees to pay all taxes, general or special, levied on said demised premises during said term, in due season, and will not permit any part thereof to be sold for any tax or assessment.

Second. He will pay said Harvey an annual ground rent of $500 in addition to the like sum reserved in the former lease, that is to say, he will pay $1,000 on the first day of January next, and the like sum on the first day of January in each succeeding year, to order of first party hereto during the term of this lease (the $1,000 ground rent for the year ending October 1, 1871, being already paid).

264 Third. He will pay said Harvey a mining royalty on all ore mined and exported from said premises of 20c. per ton of 2,240 pounds, on verified statements to be furnished by said Breitung in the months of December and June in each year for all shipments or exports of ore mined from said premises up to the first day of those respective months, and the royalty shall be paid to said Harvey upon all ore mined and exported from said premises prior to the first day of each June and December, within four months thereafter in lawful money of the United States, at any bank or deposi-

tory to be designated by said Harvey within said county of Marquette. Failure to pay any royalty within thirty days after due, or any ground rent for thirty days after demands made, or making false returns with intent to defraud, shall render this lease void, and said Harvey may thereupon re-enter and take possession. This lease is made subject to the following reservations:

First. Said Harvey may grant to the Northern Iron Company, or any other company in the village of Harvey, or present limits of Chocolay township, in Marquette county, the right to mine ore to supply their iron furnaces there built, or to be built, not exceeding two stacks, or such portion of such supply as they may find it desirable to use as a mixture, etc., free of royalty or expense, except actual cost of mining; and provided, that if in procuring such ore improvements of said Breitung are used, proper compensation at a *pro rata* cost per ton shall be made to said Breitung; but if such ore shall be taken from a locality not improved by said Breitung, or his representatives, no allowance shall be made. The right to license as above reserved shall not extend to more than one company with two stacks at the same time, or to two companies, each to use not more than one stack in consumption of ore from said premises at the same time. The royalty reserved shall be paid by said Breitung upon all ore taken from said premises by him for use or exportation, whether actually used or sold or otherwise, at the times of accounting.

265 This lease is made subject to the rights of James L. Reynolds in the mineral as reserved in the deed and contract of said James L. Reynolds to said Harvey, dated February 26, A. D. 1857, and recorded July 3, 1857, in said Marquette county in Book B, pages 381 and 382; also as declared and stated in the contract of this date between said Reynolds and Harvey explanatory of said former deed and contract.

This lease may be terminated by said Harvey or his legal representatives at any time within six months after any December first, in case the production of ore during the twelve months ending at said date, and on which royalty is payable, shall not exceed 10,000 tons. Notice of such election shall be given to said Breitung, and the lease shall thereupon terminate on the first day of June next ensuing, provided, however, that if the production of any year shall fall short of 10,000 tons, said Breitung may save a forfeiture by paying royalty upon that amount, and he shall be entitled to mine in succeeding years, without paying royalty thereon as many tons as he shall have paid the royalty upon without having mined the same in the former years, but this shall only be done in case he shall during each succeeding year also mine in addition or pay royalty upon said minimum amount of 10,000 tons. In case said Breitung shall incur a forfeiture, or in case this lease shall terminate in any manner, he shall remain liable for all rents, dues and royalty accrued or accruing prior to surrender of full possession to said Harvey, and if he shall remain in possession of said premises after

the termination of the lease by forfeiture or lapse of time said Harvey may re-enter without process of law, and expel and remove said Breitung and all occupants of said premises, using such force as may be necessary, and may hold said premises as in his first and former estate. In case of such holding over after termination of the lease, in a lawful manner, then said Harvey shall also be entitled to enjoin said Breitung from taking ore or committing waste, and the court of chancery granting such injunction against said
266 Breitung, or any one claiming under him, shall also be empowered to decree that said Harvey be reinstated in his possession, and that said lease be canceled, and that an account be taken of all ore mined and on which royalty is due and to decree payment of all sums due under this lease, and to enforce such decree by sequestration or attachment, to the end that full and complete justice may be done between all parties, and the whole matter settled in one proceeding; and in such suit all occupants or parties claiming under said Breitung may at Harvey's election be made defendants, and said Harvey subrogated to all the rights and claims of said Breitung against his tenants or assignees in order and to the extent necessary to secure said Harvey for all sums due under this lease. Said Harvey hereby covenants and agrees that he will not suffer or do any act or thing which shall impair or annul the full effect of this lease, and with the reservations and exceptions herein provided for he will warrant and defend said Breitung, his heirs and assigns, in full and peaceable possession of said demised premises against the lawful claims of all persons, and said Breitung hereby covenants that at the expiration of this lease by forfeiture or lapse of time, he will yield, quit and surrender possession of said premises, without committing waste or damage. The remedies above named are merely cumulative, and shall not exclude said Harvey from any other remedies he may have at law or equity.

It is further provided that the exception of a strip 200 feet wide on each side of the tracks of the Peninsula division of the Chicago & North-Western railway shall extend only to the surface, and the minerals under the same shall be included in this lease.

Interlineations and erasures noted as numbers 1 to 8 on the margin were made before signing.

In witness whereof, etc., said parties hereto set their hands and seals.

(Signed) CHARLES T. HARVEY. [L. S.]
EDWARD BREITUNG. [L. S.]

Witnessed and acknowledged Feb. 7, 1871.

267 DEFENDANTS' EXHIBIT 03.

An instrument made February 1, A. D. 1871, between James L. Reynolds and Edward Breitung.

Said Reynolds lets and demises to said Breitung for the term of fifteen years from the first day of October last (1870) the undivided half interest of said Reynolds in the iron ore upon or within the following lands, in Marquette county, State of Michigan, to-wit: The southwest ¼ of the southwest ¼ of section 5, the southeast ¼ of the southwest ¼ and the south ½ of the southeast ¼ of section 6. All of section 7 excepting the northwest ¼ of the northwest ¼, and the south ½ of the northeast ¼ of said section; also the northeast ¼ of the northeast ¼, and the northwest ¼ of the southeast ¼, and the south ½ of the southeast ¼, and the west ½ of section 8, all in town 47, range 26 west, adjoining the village of Negaunee, intending hereby to lease all said Reynolds' iron mineral interest in the lands leased to said Breitung by an instrument of this date from Charles T. Harvey, or by a former lease from said Harvey of October 12, 1870. The mineral interest hereby leased in said lands is such as was reserved by said Reynolds in his deed to said Harvey, dated February 26, 1857, and recorded in said Marquette county, July 3, 1857, in Book B, pages 381, 382, and which interest is further defined in a certain declaratory instrument or contract between said Charles T. Harvey and James L. Reynolds, dated this first day of February, A. D. 1871, to which original deed and the amendatory contract of this date reference is hereby made.

This lease is made subject to all the provisions and reservations contained in said original and declaratory contract, or either of them, said Reynolds intending hereby to lease only such interest as he actually owns in said iron ore. Said Breitung agrees to pay said Reynolds in a mining royalty of 25 cents per ton (25c.) of 2,240 pounds for all ore mined and taken from said premises during said term upon verified statements to be furnished by said Breitung
268 in the months of June and December of each year, which shall include all ore mined and taken from said premises up to the first days of those respective months, and the royalty shall be paid upon all ore mined and taken from said premises prior to the first day of each June and December within four months thereafter in lawful money of the United States at any bank or depository designated—for the time being—by said Reynolds in Marquette county. Failure to pay any royalty within the four months specified, or making false returns with intent to defraud, shall render this lease as against said Reynolds void, and of no effect, at the election of said Reynolds, which may be exercised at any time after any default. The royalty reserved is payable for the undivided half interest of said Reynolds in all ores mined—being equal to fifty cents royalty per ton for the entire interest—and is to be paid

said Reynolds (except as hereinafter stated) upon each and every ton that is mined and taken from said premises; and said Breitung shall at all times pay and specify said Harvey or those claiming through him for the other undivided half of said minerals, and shall save said Reynolds harmless from all claims in respect thereof. All agreements herein to said Reynolds shall also extend to his legal representatives, heirs and assigns, and all agreements by said Breitung shall bind also his heirs and legal representatives, and they shall remain bound notwithstanding any sub-lease or assignment by him or them.

Said Breitung shall permit the Pioneer Iron Company, or its corporate successors, to enjoy such mining privileges as it possesses under the permit or conveyance from said Harvey, dated September 7th, 1857, and recorded in Marquette county same day in Book M. R., page 64, and this lease is made subject to the mining rights of said company. Said Breitung shall also permit the Northern Iron Company or any other company within the present limits of Chocolay township in said Marquette county to mine ore under the license from said Harvey to supply the iron furnaces of said company
269 or companies, not exceeding in the aggregate the supply of more than two stacks at any one time, and this lease is made subject to said right of Harvey to license as aforesaid. For ore lawfully mined by said Pioneer Company for its own use or taken under said mining lease by Harvey no royalty shall be due to said Reynolds, but he shall be entitled to royalty upon all other ore mined and taken from said premises. The royalty reserved shall be paid to said Reynolds upon all ore taken from said premises, whether actually used, sold or converted or not at the times of accounting.

This lease may be terminated by said Reynolds at any time within six months after any first day of December during said term in case the production of ore during the twelve months next preceding that date (and on which royalty may be payable) shall not exceed 10,000 tons. Notice of such election to terminate shall be given to the said Breitung upon the premises, and this lease shall thereupon terminate on the first day of June next ensuing. Provided, however, that although the production of any year shall fall short of 10,000 tons, said Breitung may prevent a forfeiture by paying royalty on that amount, and he shall be entitled to mine in succeeding years without paying royalty thereon as many tons as he shall have paid the royalty upon without having mined the same in the former years.

(Insertion appears upon the page of record as follows: But this shall only be allowed upon his mining in each succeeding year 10,000 tons in addition to such arrearages, or upon his paying royalty for that additional amount in each succeeding year.)

In case the lease of this date from said Harvey to said Breitung shall be forfeited or canceled or in any manner determined prior to said fifteen years from October 1, 1870, then this lease shall also

terminate at the election of said Reynolds by giving thirty days' notice of such election upon the premises at any time subsequently to the termination of said lease from Harvey.

270 Said Breitung covenants to quit and surrender possession of the premises herein demised without committing waste at the expiration of this lease, whether by lapse of time or otherwise, and shall be liable under this lease for all sums due said Reynolds in respect to said property while in the possession of said Breitung, and if said Breitung shall remain in possession thereof after the determination in any manner of this lease, said Reynolds may enjoin him from taking ore or committing waste, and the court of chancery shall have full power to decree that said Breitung and all claiming under him shall quit and surrender possession, and that this lease be canceled, and that an account be taken of all ore mined, and to decree payment of all sums due under this lease, and to enforce its decree by sequestration or attachment, and to subrogate said Reynolds to the rights of said Breitung as against all parties claiming under said Breitung, and to make all such other orders and decrees as may be agreeable to equity, to the end that the whole may be settled in one proceeding. Said Reynolds shall also have the like right to the aid of the court of chancery for a full account and equitable relief, and for a decree of all moneys due under this lease, or damages sustained by breach of covenants herein, even though no injunction be required, and whether said Breitung shall be in or out of possession. Such chancery relief is, however, merely cumulative, and shall not be taken to exclude said Reynolds from resorting to any other legal remedy. Subject to the conditions of this lease, and provided said Breitung shall at all times promptly make the payments and fulfil the covenants herein on his part contained, said Reynolds hereby covenants that against all persons claiming said mineral interest through himself only, he will warrant and defend the same, in the quiet possession of said Breitung, his legal representatives and assigns, during said term.

In witness whereof, said parties hereto set their hands and
271 seals (said Reynolds executing by William C. Reynolds, his attorney in fact), the day and year first above written.

(Signed) JAMES L. REYNOLDS,
By WILLIAM C. REYNOLDS,
Attorney in Fact. [SEAL.]
EDWARD BREITUNG. [SEAL.]

In presence of
A. T. SHERMAN.
P. A. HOYNE.

Acknowledged in Cook county, Ill., on the 25th day of February, A. D. 1871.

This lease, by a subsequent instrument, was extended and continued in force until December 1, 1891. This extension and con-

tinuance in force was executed by the heirs and the executors of James L. Reynolds, February 3, 1881.

Mr. HAYDEN: Now I refer to the record of the lease last named, dated February 1, 1871, and recorded in Liber 1 of Miscellaneous Records of this county, at page 319 and following pages.

COURT: That is Reynolds to Breitung?

Mr. HAYDEN: Yes, sir, covering these lands to the Milwaukee Co. and other lands. I read from this record the following. This lease is dated February 1, 1871, and recorded March 8, 1871, from James L. Reynolds to Edward Breitung, and it contains the following: "Said Breitung shall permit the Pioneer Iron Co., or its corporate successors, to enjoy such mining privileges as it possesses under a permit or conveyance from said Harvey dated September 7, 1857, and recorded in Marquette county on the same day and book of Miscellaneous Records, page 64, and this lease is subject to the mining rights of said company."

Q. Now, Mr. Foley, you say that you didn't hear of any such a thing as that, do you?

A. I remember something about a second lease that Mr.
272 Kidder got after buying from us, on account of getting the royalty reduced, paid so much money and got the royalty reduced.

Q. I am referring to the provision I have just read from this lease of the Milwaukee Iron Co., what you know about referring to the Pioneer Iron Co.'s rights?

A. I don't know about that. Mr. Adams attended to all those things.

Q. Whether he knew about it or not, you don't know?

A. I don't know, probably he did.

Q. Now what was the next exploration you worked on by the way, when the Milwaukee, when did it cease its operation?

A. I couldn't tell you exactly. I sold in 1881 and superintended three years after that, and I think then the Carmichaels had it on contract, and Joe Sellwood one year on contract.

Q. That is five years?

A. Yes, I think so.

Q. And they ceased then, did they?

A. I think so.

Q. That would make five years, from what date are you figuring it?

A. From 1881.

Q. That would make it about 1886.

A. I am not sure about the time they ceased; that is my memory.

Mr. HAYDEN: There is an extension of this lease, I wish to put in a further fact regarding it.

COURT: An extension of the Milwaukee Iron Co. lease?

Mr. HAYDEN: In connection with the same testimony. This lease to the Milwaukee Iron Co., recorded on page 210 of Liber 4, Miscellaneous Records referred to, running for a period of 8 years from December 1, 1883, and was subsequently extended. The book and page of the record and extension is not referred to here. I haven't got that, but I will produce it later.

COURT: You don't offer the record of the extension now?

273 Mr. HAYDEN: I don't, sir, I haven't it here. The lease is recorded in Liber 4, page 210.

I think the next exploration I worked on after the Milwaukee was what is now known as the New York Hematite. We bought that property from Neeley and Sweeney; bought the lease I mean. I think there was a lease. I guess if we would pay $22,500 we would get a lease. I am not positive about the lease.

That exploration was conducted in the eighties. I think in 1885 or 1886, somewhere thereabouts.

Q. Is it not a fact that no lease at all of that property was granted at that time, and that you afterwards tried to get a lease?

A. I don't know. I think we had a lease. Of course we must have had some rights there. As I said before, I didn't attend to that part of it at all.

Q. You are merely guessing at the rights now?

A. Well, we had some rights there, but I don't remember that I read the lease.

Q. You don't remember after Mr. Breitung's death in 1887, you tried to get a lease and failed to get it on that New York Hematite property?

A. When the same was made from Neeley and Sweeney to us, Adams and Foley?

Q. Leave out Adams and Foley and Neeley and Sweeney, it is a fact, isn't it, that yourself and John Q. Adams tried to get a lease of that New York Hematite property after the death of Edward Breitung, and you failed to get it, and at the time you claimed to have some rights in the property.

A. I couldn't tell. Mr. Adams could tell more about it, he attended to that part of it.

Q. Are you willing to say that you knew nothing about it at all?

A. Well, there was some talk about it, but——

Q. What was the talk?

274 A. I don't remember it now.

Q. What was the talk about, to what effect?

A. Well, talk about getting a lease, I don't know—Mr. Adams told me from time to time, I didn't pay much attention to that, because I didn't know anything about it.

Q. To what effect was the talk finally, that you did or did not get a lease?

A. I don't know.

Q. You swear to that, do you?

A. I don't know that we had a lease, we had an option we were working there.

Q. Now about the lease?

A. I don't know about the lease.

Q. You are willing to say that you don't know whether you succeeded or failed to get a lease?

A. I don't know.

Q. Why is it that you remember so clearly what you did in 1869 and who hired you and who paid you and all that, and you don't remember anything of the New York Hematite concerning your title in the eighties?

A. At that time I was contracting for myself and tried to keep my own accounts the best I could, and in the eighties Mr. Adams kept everything.

Q. Were you not interested then?

A. I didn't pretend to keep any.

Q. Were you not interested?

A. Yes, I was as partner.

Q. When was it that you found this 67 per cent. ore on the New York Hematite property?

A. That was later; that was in, I think, 1888.

Q. Under what right or privilege were you working at that time when you found it?

A. I guess an option.

Q. An option from whom?

A. From Neeley and Sweeney.

275 Q. An option or a lease?

A. I bought it of them.

Q. When did you buy it. I understood you bought it earlier.

A. We bought it several years ago, two or three years anyhow, before we done the last work you are speaking about.

Q. Why was it when you found this 67 per cent. ore you didn't go on and open up a mine?

A. Well, some trouble between Mr. Breitung and Mr. Kaufman.

Q. Which Breitung?

A. Mr. Adams I mean to say and Mr. Kaufman.

Q. N. M. Kaufman?

A. Yes, sir.

Q. What had N. M. Kaufman to do with it?

A. I don't know. I guess he had something to do with it, some say so about it.

Q. In what way?

A. I don't know what interest he had in it.

Q. Did Mr. Kaufman represent the Breitung estate at that time?

A. He pretended to, yes, I think.

Q. Were you not still interested?

A. In the property?

Q. Yes, sir.

A. Yes, sir.

I thought it was a pretty good find and was very anxious to have a lease. I don't know if Mr. Adams got a lease. He ought to know about that. Probably I would know about it if Mr. Adams had gotten a lease. I never charged Mr. Adams with getting a lease and beating me out of my interest in it. He may have gotten the lease.

Q. Don't you know that he didn't get it?

A. Well, I don't know as I do.

Q. Didn't Mr. Adams tell you so?

276 A. I don't know. I don't remember that he did.

Q. You don't remember?

A. No. I kept on working and paying the taxes.

Q. Without any lease?

A. Well, we had a kind of an agreement for a lease or something of that kind.

I mined some ore and shipped some. I shipped ore from the New York Hematite where I done that drilling. I got it under the diorite schist that laid under it. The ore was on the schist. There was a little stripping; we got that off and took the ore off to the schist. We didn't stop when we got to the schist. We sunk a shaft in 1888. I am not quite sure that it was in 1888. It may have been in 1889. I don't know whether it was in 1890. I think it was. I remember working there without having any lease, and paid taxes there too under the terms of the option. I don't know where that option is. A part of the time Mr. Adams paid the taxes. He paid to a certain time, when he wouldn't pay any more after that. The reason he wouldn't pay any more was on account of some quarrel that he had with Nate Kaufman. I hadn't any quarrel with Nate Kaufman. I don't know why I didn't get a lease. I was depending upon Mr. Adams to attend to it. When Mr. Adams had the quarrel with Nate Kaufman and failed to get the lease, that was the end of him paying. He wouldn't pay any more. I then continued to pay. I think I had a right. I never followed it up under the right. We quit working there finally on account of this quarrel, some trouble with the Breitungs. We quit because we didn't have any money to go on. The quarrel might be a part of it. I know Mr. Adams quit about that.

I hadn't quite a half interest, pretty nearly a half interest.

277 Mr. Adams didn't have the remaining portion. William P. Healy of Marquette had a small interest. I don't know whether he had any interest in the Breitung estate. I don't know whether he was attorney for the Breitung estate either.

Q. You had a half interest or nearly so in an option upon a piece of land in which you discovered a 67 per cent. ore?

A. Yes, sir.

Q. And you quit because of a quarrel, and yet you never undertook to find out what the merits of it were, is that so?

A. Now, Mr. Healy and Mr. Adams both were lawyers, and they

were partners in it and they must have had something, but I don't know about it, they will tell you that part of it.

Q. You didn't even get at the facts?

A. No.

Q. You hadn't sufficient curiosity to get at the facts?

A. No, I didn't.

Q. Then the work couldn't have been very valuable, could it?

A. Yes, it was valuable.

Q. You didn't think you found very much then?

A. Yes, I did.

Q. And yet you didn't push it? Now, Mr. Foley, has anything occurred to wipe out of your mind or memory all that transaction?

A. I don't know of anything.

Q. I suppose when you found ore you published it in the newspaper, didn't you?

A. I don't know about that.

Q. What do you say about that?

A. I know I found the ore.

Q. Did you publish the fact in the newspaper?

278 A. I don't know as I did.

Q. You have no recollection on it one way or the other?

A. I don't remember that that went into the papers.

Q. You don't know that that went into the newspapers, I mean?

A. No, sir.

Q. Did you go and tell the Pioneer Iron Company about the discovery?

A. No, sir.

Q. Did you tell Nate Kaufman what you had found?

A. Yes, sir.

Q. Whom did you talk with regarding a lease after you found the ore?

A. Mr. Kaufman and Mr. Breitung.

Q. Edward N. Breitung?

A. Yes.

Q. Did you tell Edward N. Breitung about it?

A. No, they didn't want anything done with it while Mr. Adams was in it; that is Mr. Breitung didn't say so, but Mr. Kaufman did.

Q. What did you do about that, did you put Mr. Adams out of it?

A. No, I couldn't do that—I had nothing to do with that.

Q. Did you try to get a lease to yourself?

A. I think I did later.

Q. You did, you think later, get a lease of the New York Hematite?

A. I didn't say that.

Q. You tried to?

A. Yes.

Q. But you didn't get it?

A. No, sir.

Q. What was the reason, then?

279 A. Well, that was later on after Mr. Adams was out of it. We couldn't agree on terms somehow.

Q. Did you do any exploring on the New York Hematite or any of the other of these lands over south of Negaunee 6, 7 and 8 after the year 1888?

A. I don't remember that I did. I might have.

Q. You have a very distinct recollection of numerous explorations conducted before then, but you have no memory whatever as to whether you conducted any afterwards, is that a correct statement?

A. It may be. I think maybe I shipped a little ore from what they called the manganese pit at one time after that, but I couldn't tell what year it was without looking over the papers and I can't do that very well now.

Q. You have been aware of the talk in Negaunee about the barren lands over to the south of Negaunee that contained ore which nobody worked, haven't you? You have heard of that talk since 1896, haven't you?

A. I might have; yes, I think probably I have.

Q. You heard that talk and know that it was true, don't you?

A. Well, lately of course I guess it has been true that they wouldn't give anybody any options.

Q. Since 1888?

A. Well, I don't know about the year exactly.

Q. Do you know of any options granted on these lands since the year 1888?

A. I don't know.

Q. Do you know of any explorations by anybody on these lands since the year 1888?

A. I don't know whether the Grand Rapids done any or not—the Davis mine.

Q. You don't know whether they did any or not?

A. No.

280 Q. What other explorations have you conducted that you can mention now, in which you have found ore besides the New York Hematite?

A. The Milwaukee and the Wheeling, that is called the Davis now.

Q. What other property, if you remember of any?

A. What do you call good ore?

Q. Didn't you testify here yesterday that you were a mining man?

A. Yes, sir.

Q. Didn't you testify that you were engaged in numerous explorations to find ore?

A. Yes.

Q. Don't you know what good ore is?

A. Well, I call 60 per cent. good ore; 50 per cent. ore if it will sell is good ore.

Q. I ask you what other explorations that you conducted were

there except those you have testified to, in which you found good ore?

A. The Bay State for one.

Q. When was that?

A. I think that was in the eighties.

Q. What time in the eighties?

A. The latter part of the eighties, I guess.

Q. What is the description of the Bay State, do you remember it?

A. It is on section 8 N. E. ¼ of the S. W. ¼, I guess.

Q. You don't know what year it was?

A. I don't remember exactly the year.

Q. Who had the title to explore there?

COURT: The Bay State, if you want the description, is the W. ½ of the N. W. ¼ of section 8.

Mr. HAYDEN:

Q. What year was it you found that ore?

281 A. I didn't find that ore. Mr. Allen and Mr. Blake had that option, they formed a company and Mr. Adams and myself and Mr. Griffey and Mr. Wells went into it. I got some of the stock and they appointed me superintendent.

Q. When was the lease granted—was there a lease?

A. I don't remember that; I don't know about that part of it, the lease part of it; I wasn't handling the papers.

Q. You don't know anything about it. How good was the ore you found?

A. Well, I don't remember that I got that assayed, but it must be somewhere about——

Q. I don't ask you to guess at it, I ask for your certain knowledge, and if you have no certain knowledge of it, I don't want it.

A. I don't remember now.

Q. You don't remember. What did you do with the property?

A. We quit there.

Q. Why did you quit?

A. We had no money to go on.

Q. Is that the only reason?

A. The principal reason.

Q. Why didn't you sell it to somebody who had money?

A. Well, I don't know as we looked for anybody. I guess they were trying to sell it.

Q. It hadn't value enough to enable you to sell it?

A. It might not have at that time, and it might have.

Q. You don't know anything about it. When did you quit?

A. Oh, we didn't work there very long.

Q. When did you quit?

A. Six or eight months.

282 Q. That was in 1882, was it?

A. No, later than that.

Q. In 1883?
A. Later than that it must be.
Q. 1884?
A. It must have been near 1888, about there.
Q. Were most of these explorations you conducted over there conducted in the years 1887 and 1888?
A. No, there were some of them conducted before that.
Q. Most of them were conducted during 1887 and 1888?
A. Well, about that time. I think, there was as much prospecting done as at any other time.
Q. Prospecting in Negaunee goes in sorts of waves or crazes; they go on for a couple of years and then they quit, that is true, is it?
A. Yes.
Q. That was this occasion when so many explorations were being conducted, wasn't it?
A. Yes.
Q. Can you name any property of those numerous explorations that were conducted in 1887 or 1888 or in the eighties, as you call it, that turned out to be a mine?
A. Well, they were called mines at that time—the Chicago.
Q. How long since has that ceased to operate?
A. I think that ceased to operate in 1885.
Q. Name another?
A. I don't remember now.
Q. You don't know, do you, that the lease under which the west half of the northwest quarter of section 8 was operated was a lease to George Perry, do you—or Gerry or Gervey—George S. Terry, I guess it is?
A. I didn't.
Q. You don't know anything about that lease?
283 A. No.

Mr. HAYDEN: I wish to offer in evidence in connection with this Liber 2 of Miscellaneous Records, page 177, a lease from Edward Breitung to George S. Terry, dated Feb. 2, 1874, and recorded April 18, 1874. It run for a period of 12 years from Oct. 1st, 1873, and it describes this property, the W. ½ of the N. W. ¼ of section 8, and it contains this clause: "This lease is given and made subject to all the reservations contained and mentioned in the lease of said land from James L. Reynolds to said Breitung, dated Feb. 1, 1871; the said lease was recorded in the office of the register of deeds of said county of Marquette, and reference is here particularly made to said lease as to the reservations contained in the same."

Said reservation clause also contains the followings words: "This lease is given and made subject to all reservations contained and mentioned in the lease of said land from C. T. Harvey to said Breitung, dated Feb. 1, 1871, and executed and acknowledged Sept. 19, 1871, and in the lease of said land from C. T. Harvey, dated Oct. 12, 1870. Said leases are recorded in the office of the register of

deeds of said county of Marquette and reference is here particularly made to said leases and to the reservations contained in the same."

I offer that as a part of the cross-examination.

Mr. ELDREDGE: It is objected to as being no part of the cross-examination and irrelevant and immaterial.

Mr. HAYDEN: I offer it as evidence at this time in connection with this cross-examination. I offer the record according to the pages given.

Q. Now, will you name another property, right in line with the first question, in which you discovered good ore?

A. I don't know of any; I don't remember any now. I done a great deal of prospecting from time to time, but I can't remember all of it now.

284 Q. You did remember it all yesterday?

A. No, I didn't.

Q. Have you forgotten since yesterday?

A. No, sir.

Q. You have in mind, now, have you, everything you said yesterday about it?

A. Pretty much, about those properties.

Q. Can you name any other property in which you found what you call good ore?

A. No, I don't know as I can.

Q. In reference to this last property, it ceased working as I understand you to say, in 1885; has it been worked since?

A. Which property is that—the Bay State?

Q. Yes, the W. ½ of the N. W. ¼ of section 8?

A. I don't think it has. Whatever year we worked it, that was the last work.

Q. Was any ore shipped from it?

A. Not while we worked it.

Q. Was any ore shipped away from the New York Hematite?

A. Yes, sir.

Q. How much?

A. Oh, we must have shipped five or six thousand tons.

Q. Who did you ship it to?

A. We shipped it to Cleveland.

Q. To whom?

A. I think to Ogleby & McGerry.

Q. At what place on the forty was this taken from?

A. On the west side.

Q. What were the results of the ore shipped?

A. The results, some good ore and some poor ore; some of it was very rich.

Q. On the whole was it satisfactory to ship?

285 A. Oh, it wasn't satisfactory, some of it, after it got down there.

Q. Whereabouts with reference to the water tank was this place you took the ore from?

A. It would be south and east, that is, part of it, and the balance of it would be south and west from the water tank.

Q. Is this shaft from which you took that ore the one in which the Pioneer people entered in 1899 and began to work?

A. No, sir.

Q. Whereabouts with reference to that shaft that they entered, that you told about, did you take this ore?

A. Well, right south of it; say 200 feet or such a matter.

Q. Two hundred feet south of it?

A. Yes.

Q. Have they worked there?

A. They didn't do any work there.

Q. Have they put some drillings down there near?

A. Yes, sir.

Q. To go through the formation?

A. Yes.

Q. I suppose you don't know the result of those drilling operations, do you?

A. I don't know only what I heard.

Q. Did you make any inquiries of Mr. Duncan?

A. No, sir.

Q. Did you ship any ore from this Bay State property?

A. No, sir.

Q. Did you tell the Pioneer Iron Company what you found on the Bay State?

A. No, sir.

286 Q. Did you publish the fact in the newspapers?

A. No, sir.

Q. Was it customary for these explorers to go around and publish what they had found in their pits?

A. It may have been mentioned in the Iron Herald; C. G. Griffey was one of the stockholders in the Bay State, and it might have got into the Iron Herald.

Q. If it was for his interest to publish it, he would have put it in, probably?

A. I don't know that.

Q. The question I now ask you is, whether it was customary for you explorers to have those facts published?

A. I think it was.

Q. You think it was?

A. Yes.

Q. Before you had a lease?

A. Yes, sir, when we were working under option.

Q. The stuff you found in these diggings, whatever they were, was brought to the surface, and anybody who chose to do so could go there and examine it, couldn't he?

A. Yes.

Q. And opinions differ about ore that may be good enough to ship, don't they?

A. Yes.

Q. A great many of these explorations conducted on these lands there, were worked to quite an extent, and a lot of stuff taken out of it that proved to be unmerchantable; that is true, is it not?

A. That is true.

Q. There was a very, very great deal of work done, and a very great deal of money expended to find something that was absolutely not merchantable?

A. Yes, there was a good deal spent in that way.

Whatever ore I was looking for in these explorations,
287 that I conducted, I was looking for for the purpose of shipping it. I am not sure as to the year I conducted explorations on the north half of the southeast quarter of section 7; that is the Himrod. It might have been in the 90's and it might have been in the 80's. I only guess that. It might have been the latter part of the 80's or the early part of the 90's. Mr. Sweeney got the option. I don't know whether any lease was granted. I didn't see any. I heard of the Himrod Hematite Company. They did their work there earlier in the 70's I think. They quit, but I don't know why. I don't know as they did find any very good ore. I wasn't familiar with the terms under which they worked the property. So far as my paper title was concerned, Mr. Sweeney had that option, and I got a quarter interest from him, and we got some other parties into it. I never have seen the papers for that. I never saw any paper or heard any talk about any clause in the paper referring to the rights of the Pioneer Iron Company. I didn't know as a matter of fact that the Pioneer Iron Company had some kind of a right in those lands. Nobody ever told me.

I have conducted some of my own business and had business looked after some. I never undertook to look up the question of title in any property that I was interested in or right. I left that wholly to other people, that is Mr. Adams, when he was in with me and others when they were in with me. I did not have anything to do with the papers.

I described yesterday the operations that had been conducted on that same property beforehand, this Himrod property—the shafts and openings, etc., made by the Himrod people and a Mr. Wise afterwards. These operations had ceased quite a long time before I
went on. I guess after Mr. Wise worked it, Mr. Sweeney was
288 the first man that got an option on it. I don't know where the Sweeney option is. I never have seen it. There might have been a lease granted to the Himrod Company or Mr. Wise for what I know.

Mr. HAYDEN: In connection with this testimony, I offer in evidence the lease granted by Edward Breitung to the Himrod Hematite Company dated September 26, 1872.

Mr. ELDREDGE: That is objected to as immaterial and irrelevant.

Mr. HAYDEN: That is recorded in Liber 2 of Miscellaneous Records on pages 121 and following, on the 14th of January, 1874, and

will read such as I wish to have considered. The lease covers this property, N. ½ of S. E. ¼ of section 7, 47–26. It runs for a period of 14 years from the first day of October, 1871. It contains a reservation in the following form: "This lease is given and made subject to all the reservations contained and mentioned in a lease of said land from C. T. Harvey to said Edward Breitung, dated October 12, 1870, and in a lease of said land from C. T. Harvey to said Breitung dated February 1, 1871, and executed and acknowledged September 19, 1871, and in a lease of said land from James L. Reynolds to said Breitung, dated February 1, 1871." The last named lease I have read the record of.

"Said leases are recorded in the office of the register of deeds of said county of Marquette, and reference is thereto particularly made to said leases and as to the reservation contained in the same." Said lease is signed by Edward Breitung and "T. B. Brooks, president; A. B. Cornell, secretary, of Himrod Hematite Company."

The property known as the S. W. ¼ of the S. W. ¼ of section 7 is the South Wheeling. The Wheeling covers two forties.

Mr. HAYDEN: I will read the whole description contained
289 in this lease, the S. W. ¼ of the S. W. ¼; the E. ½ of the S. W. ¼ and the S. E. ¼ of the S. W. ¼ of section 7.

I don't know anything about the paper title under which the work was done on those forties. I did some work on the Chicago. I never knew of anything being done on the S. W. ¼ of the S. W. ¼ of sec. 7 except farming. We found a little ore on the E. ½ of the S. W. ¼—I don't know as we did find any ore there. The Chicago had two forties east of that, one, east ½ of the S. W. ¼ would be the Jefferson and the 40 south of the Jefferson. I did some work on the Jefferson; we only had a verbal option. We had that when I was working on the Milwaukee in 1882, I think. The verbal option we got from Mr. Breitung, we never had a lease. We found a little ore there—I don't know as we did find any ore there.

Work had been done on these properties before I went there, I disremember who did the work, but I think Sheldon and Crocker did some work there. This work on the Jefferson, Wheeling and Chicago, about which I testified, might have been done in the 70's so far as I know. I should say the Chicago closed down in 1884.

Mr. HAYDEN: I offer in evidence in connection with this testimony of Mr. Foley both the direct and cross, a lease recorded in Liber 2 of Miscellaneous Records, page 62, following a lease from Edward Breitung to Edward Jervkosky, dated the 7th day of January, 1873, and recorded July 1, 1873, at the pages mentioned. The lease covers the S. W. ¼ of the S. W. ¼ and the E. ½ of the S. W. ¼ and the S. W. ¼ of the S. E. ¼ of sec. 7, 47–26. It runs for a period of 14 years from October 1, 1871, and contains among other things this reservation:

"This lease is given and made subject to all the reservations con-

tained and mentioned in a lease of said lands from C. T. Har-
290 vey to said Edward Breitung, dated October 12, 1870, and in a lease of said lands from C. T. Harvey to said Edward Breitung, dated February 1, 1871, and executed and acknowledged September 19, 1871, and a lease of said lands from James L. Reynolds to said Breitung, dated February 1, 1871 (the last named being the lease already read from the record), the said leases are recorded in the office of the register of deeds of said county of Marquette, and reference is here particularly made to said leases and the reservations contained in the same."

Mr. ELDREDGE: That is objected to as irrelevant and immaterial.

The land on which Major Brooks worked was section 8. I think the S. ½ of the S. E. ¼. I think he did that work in the 70's. It might have been earlier, in 1869, while he was, I think, agent of the Iron Cliffs Company. He may also have been the agent of the Pioneer Iron Company for what I know. I couldn't tell you exactly how much work he did. He was driving a drift there on the ledge under the surface, following the ledge up the hill. He was looking for ore I suppose—outcrop. I don't know whether that work done by Major Brooks was done about the same period of time that these other explorations and mining work was done in the 70's that I refer to. My best recollection is, I was prospecting down there at the time when Major Brooks was, from a supposed knowledge that the Jackson ore ran down there, and I was down there and Mr. Anthony was. It was Major Brooks' work the suspicion that he must know that there must be ore there that induced me to go to work. I don't know whether that also stimulated other people to go to work. When we sunk the shaft on the Brickyard 40, being the N. E. ¼ of the S. W. ¼ of sec. 8, we had an option from Mr. Breitung. Mr. Heineman got the option for himself and me.

I wouldn't swear whether it was a written option or a
291 verbal option. There was a great deal of work done at that time on verbal options from Mr. Breitung, because his word was as good as his bond. Nothing resulted from the option. The parties in with us wouldn't put in any more money and we could not get any further. I don't know that the reason was that there wasn't sufficient ore to induce capital to be invested. We had ore all the way from the surface to the bottom, and had a drift going south from that. We didn't ship any ore. The Iron Cliffs Company is working on the Brickyard 40 now. I was told so. Was told by the man there that it was the Cleveland Cliffs Company that sent them there.

I think this work on the Brickyard 40 was done by me in 1886. It ceased in 1886. We never did anything afterwards. I have no memory of seeing the property worked or explored for iron ore afterwards until these people went on there in 1899.

C. H. V. CAVIS, sworn on the part of the complainants, testified as follows:

Direct examination *of* Mr. SHAULL:

I live in Marquette; have lived there since June, 1864. I am familiar with the right of way of the Peninsula division of the Chicago & Northwestern Ry. Co. through the city of Negaunee and for some distance beyond the city to the south and east of Negaunee. I was with that company in the years before I came here. I had something to do with making that survey. The map you show me correctly represents the locations of the right of way of the Chicago & Northwestern Ry. through sections 6 and 5, as it existed in 1871 and 1872 and 1882.

Mr. SHAULL: I offer the map in evidence.

Mr. HAYDEN: What is the purpose of the map?

292 Mr. SHAULL: It is to locate the Chicago & Northwestern Ry. track at the time these deeds were given, to show where it was at that time.

(Map marked Exhibit S and accompanies this record.)

Cross-examination by Mr. HAYDEN:

I am not now working for the Chicago & Northwestern Ry. Co. I have been with the companies that exist here in Marquette since 1864. I was with the Chicago & Northwestern from June, 1863, to June, 1864, when they were building this line from Negaunee. I was on that survey when it was made down towards Escanaba. I don't know of any change in the right of way since 1870. I have seen none made on the maps. I was familiar with the location, sometime in 1863 and 1864, I was running the transit at the time, and of course I had to know.

J. M. EDGERTON, sworn on the part of the complainants, testified as follows:

Direct examination by Mr. SHAULL:

I live in Negaunee; have lived there since July, 1886. I am a lawyer. I am familiar more or less with the mines and mining companies in that vicinity, that is generally familiar with them. In the course of my business I have more or less business relations with the men at the mine and the mining companies, that is their agent and employés.

Q. Do you know who run the Pioneer furnace from the time you came there to the time it went out of blast?

Mr. HOYT: That is objected to as incompetent and immaterial.

A. Well, only from hearsay. I understood the Iron Cliffs Company run it.

293 Mr. HOYT: That is objected to as incompetent and immaterial.

That was generally understood. I have had charge of the surface rights of the lands spoken of in section 5, 6, 7 and 8 as being covered by this old mining privilege to the Pioneer Iron Company, dated in 1857. I have had such charge since August, 1889, and something to do with it the year before that, but I have had general charge of it since that date, about the middle of August. My business has been to look after the lands generally and collect the rent from the tenants that occupy the surface rights there. Dennis Callaghan has occupied part of the surface rights on that land at different times, under the Negaunee Iron Company and their predecessors. Mr. Kaufman employed me to look after the land. He was the agent of the Negaunee Iron Company at that time. The owners of the land have kept me employed in that position since that time. He occupied the field there located on section 6.

Mr. HOYT: This testimony is objected to as incompetent and immaterial.

I think it is the field designated here as No. 44. They are numbered and designated on this map. This is entirely a new map to me. That is the place he is occupying now—lot No. 1 or field No. 1, or whatever you are mind to call it.

There is .44 acres there. Mrs. Joseph Lequia has occupied for three years lot No. 2 designated here as .11 acres. That has a house and lot she occupies as tenant of the owners. John Chubb occupies lot No. 3 on this map, .13 acres.

Mr. HOYT: Same objection.

It is a lot with a small log house located on it. Wm. Connors occupies lot No. 4 in sec. 6, .23 acres. (Same objection.) There
294 is a house on it and he pays rent. He has occupied it for a number of years and was there when I took charge of the land. Josephine Perino occupies lot No. 6. It is a small piece of ground and a frame house located on it. She occupies from the same company and pays rent to me. She has occupied it for a number of years in the same way.

Q. Speaking of a man named Pearson, do you know him?

Mr. HOYT: The same objection continued. I will not interpose these objections if it may be understood that all this testimony is subject to the same objections.

COURT: Let it be so understood that all this testimony will be subject to the objections already made.

The place which Pearson has occupied now he has occupied two years. It is a field without any residence upon it. He has paid no

rent. Mrs. Caroline Cotay occupies lot No. 7 in section 6 and has occupied it for something over a year. It was formerly occupied by Joseph Smith who lived at that place at the time I took charge of the land. He rented from me from the Manganese Iron Company, and then the Negaunee Iron Company. Mrs. Cotay rents from me. There is one-story frame house, a small shed and fence on that place. M. C. Kenna occupies parcel designated as No. 8. It seems to me he sold out in 1886. I am not exactly positive of the date. He occupied from the same land owners. He had a house there and the improvements that had been made. He paid ground rent to me. That piece of land has been occupied by three or four different parties. I think it is John Thorngren that pays for the rent. They own the building; nearly all these people own the buildings where there are any buildings on the land, and they pay ground rent to me. I have written leases in most — these cases, not all of them. There is .37 of an acre in this piece of land
295 No. 8. John Scanlon occupies the parcel designated as No. 9, .17 acres. He has occupied that since 1889, I think. I am not quite positive he was there when I took charge of the land. He has been our tenant, paying to the Negaunee Iron Company and the Manganese Iron Company. He has a small frame house, a fence and one or two outhouses. Anna and Dan Ryan occupy lot No. 10, .28 acres. They were there when I took charge of the land. They have a house, a small lot, frame barn, a woodshed and fence. They have paid rent to me since 1889. The house on the parcel designated as No. 11 is owned or said to be owned by a widow named Mrs. Sullivan, and different parties lived in the house. It is a small shanty, one story frame and long. Rent is paid to me. They were there when I took charge of the land. The parcel designated as lot No. 12 on the map, .11 acres, has been owned by several different owners. They have all paid rent to me. There is .11 acres and a small frame house, a woodshed on it. John Penhale occupies lot No. 13; a small one-story house, a fence, a woodshed and outhouses are situated on it. He was there in 1889 when I took charge of the land. He pays rent to me. I don't know how long he was there before that. John Thorngren was there when I took charge of the land. He has a small house situated on this land, fence and other improvements and .22 acres of land. He pays rent to me. That is designated as No. 14. Wm. Eyers occupies lot No. 15, .82 acres. He pays rent to me. He sold out recently the house to a Finlander, whose name I am not familiar with at present, but they pay rent to me. Patrick Gannon occupies the lot designated as 16 on the map, .2 of an acre. There is a small log house on this land. He pays a trifling rent and pays it to me the same as the others. He was there when I took charge of the land. He
296 is under one lease the same as the others. He also owns 17 and 18. Those are small fractional parts of land, one is only .3 of an acre and the other .11 of an acre, and another .19 of an acre, each one fenced separately, each one paying rent. No. 20 is

where this man Gannon lives. He moved on No. 20 about 1896, if I remember. The others he lived on for a number of years. Those are under lease to him.

Mr. HOYT: I object to the question "all under lease" as incompetent and improper. The lease is the best evidence.

Mr. SHAULL:

Q. I will ask you generally whether you have acted as agent for the owners in taking these leases, and know whether or not there are leases?

A. Yes, sir.

Mr. HOYT: That question is objected to as incompetent and immaterial and improper and leading and I move that the answer be stricken out; the lease itself is the best evidence.

The parcel designated as 21 consists of a garden without any dwelling on it, belonging to August Mattson, who occupies it and pays rent. He has always paid rent. Mr. Wm. Scanlon occupies the parcel known as No. 22. That is a place without any house on it. It has been occupied by different ones, changing year to year, and it has always been there ever since I took charge of the land. No. 21 was John Penhale, he is occupying that to-day and paying rent. He has occupied since 1889 that I know of. Mrs. Scanlon purchased this lot 23 or the right to occupy it from Mrs. Wm. Connors, who had charge of it when I took charge of the land. Mrs. Scanlon has used this land, I think, since 1892. She is paying rent and occupying under lease I gave to Mrs. Connors. There is just a fence on that parcel. I don't know who is occupying No. 24, .14 acres at the present time. It is just fenced and has had
297 different owners. Frederick Boyle occupies No. 25, .25 acres. He is there by verbal permission. Patrick Kane or his widow occupies No. 26, .36 acres. They were there when I took charge of the land, and have a small house and fence. They pay rent to me. The buildings on No. 27, .58 acres, are now owned by Nicholas Laughlin, and the tenant of his lives in the house and rents the house. He pays rent to me. That has been rented since I took charge of the land. The buildings on No. 28 said to be .32 acres, belongs to Patrick Flannery. They consist of a small one-story log house and outhouses and fencing. He paid rent to me; has done so since 1889. No. 29 on the map, .41 acres, is occupied by Lavalle. They have a small house and fence and were there when I took charge in 1889. They are under lease and pay rent to me. The house on No. 30, .33 acres, belongs to Tim Connors. It is a small log house. He was there when I took charge of the land. He is under lease given to him by the Negaunee Iron Company and paid last rent to me. No. 31, .54 acres, is a vacant field, Mrs. John Pickett occupied it last year. That has been so occupied since 1889. The rent has been paid to me. No. 32, 1.54 acres, is occupied by Jerry Redy.

He has occupied — since 1894, I think. He is under lease and pays rent to me. No. 33, .33 acres, is a vacant field occupied by Patrick Flannery. He has occupied it since 1889, near as I can remember. It is under lease. He has paid rent to me. The last lease he had was from the Negaunee Iron Company. Mrs. Anna Tehan has occupied No. 34, .29 acres, since I took charge of the land. The improvements on that consists of the house and fence and outhouses. She is under lease from the Negaunee Iron Company and pays rent to me. No. 35, said to contain .30 acres, is a vacant field and has been occupied by different tenants. I don't know who is occupying it this
298 last year. The rent has been paid to me for that place the last year. No. 36, .35 acres, is a small log house and no one lives in it. It was formerly occupied by Patrick McMickleson, but years ago he abandoned it and it has been occupied short spaces of time by different ones. They pay the rent to me. Thomas Cannon occupied No. 37, .39 acres. It has been vacant most of the time. No. 38, .14 acres, is another vacant house. It was occupied by Michael O'Keefe. They have a lease from me and pay rent to me when they pay any rent. James Donovan has occupied No. 39, .33 acres, since I took charge of the land, and pays rent to me. His improvements are a house and fence, woodshed and some small outhouses and garden. Michael Passola, an Italian, occupies No. 40, .33 acres. He has occupied it five years under lease, his predecessor occupied under the lease from the time I took charge. John Allen has occupied No. 41, .13 acres, for a number of years and paid rent to me. His improvements are a house, one-story frame house, a woodshed, fence and garden. Mary Nicholson has occupied No. 42, .14 acres, since I took charge of the land. She pays rent to me. No. 43 and also 44, said to contain 1.9 acres, and the other, .35 acres, is a house now owned by the Killgallon estate, and they are three girls that own this, and one of the sisters occupies it with her family. Both of these places are under lease. They have been there since 1889 and years before that; they pay rent to me. Terrace Milroy occupies No. 45, said to contain .13 acres. He was there in 1889 and pays rent to me under lease. Mary C. Casey's estate occupies No. 46, 1.24 acres. She owns a number of those patches. She paid the rent to me and now the heirs pay it. They were there when I took charge of the land. There are two houses and there used to be four gardens. No. 47 is another lot owned by Terrace Milroy. No. 48 is occu-
299 pied by Mrs. Hessett. She was there when I took charge of the land in 1889 under lease. She has a house there, a barn, fencing and garden. Mrs. Wm. Scanlon occupies No. 49, 1.27 acres. She has occupied it a number of years. I think since 1889. She pays rent to me. On one of those places she has several fields. She occupies Nos. 49, 50, 51 and 52. She has a good-sized story and a half house, a barn and other outbuildings and fence enclosing all the lots. Fred Yerkes occupies No. 53, 23.77 acres. He occupies under lease and pays rent to me. There are two dwellings there and other small buildings and a fence around the farm. It is an

improved farm. Adolph Demerse occupies No. 54, 26.22 acres. He has a house there, a barn and shed for his cattle and other improvements on the farm. Some of this farm is not shown on this map. The greater part of the land is on this side of the map in sections 5 and 8. As near as I can estimate he has about 60 acres altogether. Alfred Moberg occupies the one No. 56. He was there in 1889 and pays rent to me. He has a two-story house, a frame barn and fences around the barn and other outhouses, very good improvements. I should think he had about 4 or 5 acres as near as I can estimate. Gopher Johnson occupies No. 57, 3.72 acres. He has occupied it since 1889 and pays rent to me. He has a story and one half house, frame barn and other improvements. No. 59, .80 acres, is occupied by George Flory. He bought this house from August Peterson in 1897 and has occupied it since then. August Peterson occupied it since 1889. I don't know how much longer. They have paid rent to me. The improvements there are a very good story and a half house, a good barn and fencing. Chris Johnson occupies No. 59, 2.1 acres. He was there in 1889 and has paid rent to me. He has a frame house, a barn and outhouses fenced. Peter Versalene occupied No. 60, .48 300 acres. He got there in 1890. A man by the name of Johnson occupied it before him, they both paid rent to me. Improvements are a house, a barn and fencing. Phillip Garkaleno has occupied No. 61, .84 acres, since 1892. He purchased the house from a man who occupied it when I took charge of the land. He has paid rent to me. The improvements are a house, a barn and fence. Anton Contrario, an Italian, occupies No. 62, .73 acres. He occupied it since 1890. He purchased the house from Mrs. Sauer. She occupied it for years. They paid rent to me. There is just a house and fence there. No. 63, .30 acres, that is a small open field without any house on it at all. It wasn't occupied last year by anyone. Mrs. Toomies occupies No. 64, .66 acres. Nothing but an open field and garden; she has occupied it since 1889 and has paid rent to me. Mrs. Toomies occupied No. 65, said to contain .33 acres, up to 1896. In the same condition they pay rent to me. Mrs. Wm. Scanlon occupied No. 66, said to contain .66 acres. She has occupied its ince 1889. No. 67, 1.10 acres, was occupied by Thomas Pickett up to last year. He paid the rent to me. Daniel Flynn occupies No. 68, 1.68 acres. He has occupied it since 1889 and paid rent to me. The improvements are a house, a barn and fence. Anna Meisch occupies No. 69, 6.37 acres, has occupied it since 1889. The improvements are a stone house, a barn, woodshed and fencing. She has paid rent to me. No. 70, .99 acres, is occupied by Patrick Redy. He promised to pay rent to me. There is nothing there but an open field. I think No. 71, 1.74 acres, is occupied by Mr. Redy also, under the same terms, and he agrees to pay the rent to me. No. 72, 1.22 acres, wasn't occupied last year. No. 73, .30 acres, wasn't occupied last year. Nos. 71, 72, 73 and 74 are open fields. I think 72 was oc-

pied by John Allen's wife, and she paid rent to me. No. 75, .27
301 acres, was occupied by Daniel Flynn last year, I think. It is an open field. He paid rent to me. I think that Dennis Redy occupied No. 76, .25 acres, an open field. Dennis Redy occupies No. 77, 2.09 acres, and has occupied it since 1889, and pays rent to me. He has a house and barn. William Morrison occupies No. 78, .72 acres. He has occupied it since 1889 and pays rent to me. The improvements are a frame house, a barn, fence and garden. Maurice Kelly occupies No. 79, 1.07 acres. He has occupied it since 1891, I think, and the Carmichael estate occupied it before that and paid the rent to me. The improvements are a house, a barn, a fence and woodshed. I think No. 80, .60 acres, is an open field occupied by Terrace Milroy. He has occupied it since 1889. John Toomies occupies No. 81. I think he has occupied it since 1889 and pays rent to me. The improvements are a house, a woodshed and fencing. No. 82, .62 acres, is a field that has been occupied by Dennis Callaghan for a number of years. He pays the rent to me. No. 83, .42 acres, is an open field, occupied by different owners. They have paid their rent to me. Henry Touvayari, a Finlander, occupies No. 84, 1.32 acres. I think he has occupied it since 1891. He has paid the rent to me. The improvements are a house and barn. No. 85, 1.05 acres, is occupied by Mursu. He has occupied since 1890 or 1889 and pays rent to me. The improvements are the same as the other man's. I don't know that No. 86, 1.20 acres, was occupied last summer. I think Patrick Flannery raised some potatoes on No. 87, .30 acres, last summer. He paid the rent to me. Henry Touvayari has occupied No. 88, .40 acres, since 1896. He paid rent to me since 1896. John Mursu occupied No. 89, .34 acres, and pays rent to me since 1896. John Penhale occupies No. 90, .30 acres. I think he was there when I took charge of the land in 1889. I don't know how much longer. He paid rent to me.

302 I know this Snider farm on the S. ½ of the N. E. ¼ of sec. 8. He has fractional parts of three or four forties in there. He has occupied that since 1889 and I don't know how much longer. He has a house, a barn and fencing and I think a woodshead ; quite a farm in there. I am familiar with the other farms on 8. The S. W. ¼ of sec. 8. Those three forties were rented to different tenants—the South Green Bay 40 and Lonstorf and the Star 40. They have rented since 1889 and for years before that. P. C. Peterson had them and rented them to Darlington, and then Darlington occupied them until three or four years ago, and they have been rented since then to different ones. I rented them to the Sniders, and these others, for the Negaunee Iron Company and Edward N. Breitung.

Besides the Sniders, Andrew Jacobson was a tenant. He occupies the S. ½ of the N. W. ¼ of section 8, excepting 12 acres on the south side, which is occupied by Jacob Snider, and he has a hay barn on this land and a small cottage that he used to live in, and a small shed for his machinery and fencing; that is all of his improve-

ments, he has. He has occupied it since 1889, I don't know how much longer. He has paid the rent to me. Alfred Moberg has occupied the S. E. portion of what is known as the brickyard 40 since 1891. He paid rent to me. He uses that for a meadow. I don't know how many acres he has in there, probably 14 to 18 acres. The creek runs through there; it is low land. He has no improvements, but the fencing and grubbing he has done. Chris Johnson has also occupied it. He pays rent to me. He occupies a portion of section 8 in the north half of the S. W. ¼ of the S. E. ¼ of section 8. He has a farm there of about 20 acres. There is nothing but a shanty and fencing on it. He has occupied it since 1889. I don't know how much longer.

Chris Cornblom occupies a part of what is known as the
303 Himrod 40's. He occupies a portion of one of those forties. He has occupied it since 1890. He leases from me and pays rent to me. The improvements are a house, a barn and one or two small outhouses and fencing. John Meisch occupies another portion of the Himrod 80, about 20 acres, and pays rent to me. He has occupied it 5 years. Before him Chris Hansen occupied that same portion for a number of years before 1889. He paid rent to me until he was forced to leave the land. The present tenant pays rent to me. John Mitchell occupies about 20 acres right south of Chris Johnson, in the S. ½ of the S. W. ¼ of section 8, and pays rent to me. He has occupied it since 1889 and I don't know how much longer. The rent is paid to me. The improvements are nothing, but the fence and a cultivation that he has had there. John Haskins occupies a portion of what is known as the Star mine 40. It is the S. W. ¼ of the S. W. ¼ of section 8. He has the whole 40. It has been occupied since 1889, and I don't know how much longer. The tenants have paid rent to me since 1889. The improvements are fencing. Charles Dahlstrom occupied what you name here as the Lonstorf 40, the N. W. ¼ of the S. W. ¼ of section 8. He occupies the whole 40 and pays rent to me. He uses it as a farm. He has occupied it three years. It was also in the Peterson farm. The fencing is all the improvements upon it. Elisha Walters occupied the southern portion of what is known as the Green Bay 40 until last year. He had, I should think, about 12 acres there which he used for meadow and garden purposes, that is the S. W. ¼ of the N. W. ¼ of section 8. He has occupied it two years. That was also a part of the Peterson farm and the rent has been paid to me since 1889. The fence is the only improvement.

Charles McDowell occupies about 12 acres in the northwest corner of the brickyard 40. He has occupied that two years. That
304 also is included in the Peterson farm and the rent was paid to me for years. The improvements are a house and barn and fencing and woodshed and some small outhouses, that is all that I remember now.

The map to which you call my attention is the one upon which appears the numbers that I have been testifying to. This map is familiar to me and these patches of land. The map is correct with

the exception of the pieces I have named here that I didn't find on the map, farms, etc. Those are not included in that map. This map, so far as it goes, I think has everything, but it only comes out to the border sections 6 and 7. There is a part of 5 and 8 that I have testified to that is not on the map.

Mr. SHAULL: I will offer the map in evidence and ask to have it marked as Complainant's Exhibit.

Mr. HOYT: That is objected to as incompetent and immaterial and not properly proved.

Map marked Exhibit T and accompanies this record.

The paper you show me is the form of lease that I have been giving and receiving from tenants, the tenants I have been testifying about. All who have written leases have substantially this form, up to the time the Negaunee Iron Company took possession and since that time, the words "Manganese Iron Company" have been stricken out and "Nagaunee Iron Company" written in. With that exception of the change of names and amounts of rent and description of land, it is the same. I am familiar with the signatures on the back of that lease, with both of them. I saw Mr. Snider sign this. This is a lease given to Jacob Snider of the lands marked here, about which I have been testifying.

Mr. SHAULL: I offer the paper in evidence and ask to have it marked Complainant's Exhibit.

(Paper marked Exhibit U and copy follows:)

305 THIS AGREEMENT, made and entered into this first day of October A. D. eighteen hundred and eighty-nine, BETWEEN THE MANGANESE IRON MINING COMPANY, a corporation organized under the laws of Michigan, of the city of Negaunee, in the county of Marquette and State of Michigan, party of the first part, and JACOB SCHNEIDER of the same place, party of the second part,

WITNESSETH: That said party of the first part, in consideration of the rents to be paid, and the covenants and conditions to be observed, kept and performed by said party of the second part as hereinafter set forth, does hereby let and lease to said party of the second part, the lot or parcel of land situated in township forty-seven, north of range twenty-six west, in the city of Negaunee aforesaid, and described in "Exhibit A," hereunto attached, and signed by the parties hereto, which said "Exhibit A" is hereby made a part hereof.

Said party of the second part hereby rents said premises as a tenant at will, for no special time, except that in no case shall said tenancy at will extend beyond the first day of October, 1891, on the terms and conditions hereinafter set forth, to be occupied as the farm or dwelling, or both, of said party of the second part, and for no other purposes.

And the said party of the second part does hereby hire the said premises as a tenant at will of said party of the first part, aforesaid, and does covenant and promise to pay to said party of the first part,

its successors or assigns, therefor, the monthly rent of three and thirty-three and one-third one-hundredth ($3.33 1-3 100) dollars, payable monthly, on the first secular day of each and every month during the continuance of this lease, at the office of Mary Breitung, in said city; *provided*, that in case any rent shall be due and
306 unpaid, or if default shall be made in any of the covenants and agreements herein contained, then it shall be lawful for the said party of the first part, its successors or assigns, to re-enter into and repossess the said premises, and the said party of the second part and every other occupant to remove and put out.

The following improvements now on said premises belong to said party on the second part, to-wit:

One story and half frame house; one log barn south of house; one woodshed. Said land as hereinafter described is enclosed by wire fence on north side and by brush and pole fence on other sides;

and this lease may be terminated, and such improvements may be removed by him, his heirs, personal representatives or assigns, at any time before the termination of said tenancy at will, upon payment of all rent that may then be due thereon, to said party of the first part, its successors or assigns.

The party of the first part, its successors or assigns, will not be liable for any improvements made, or to be made, by said party of the second part, his heirs, personal representatives, or assigns; and also, the same being part of the consideration hereof, all of said improvements, made or to be made by said second party, his heirs, personal representatives or assigns, on any of the lands leased hereby, unless removed before the termination, from any cause whatsoever, of said tenancy at will, shall become the property of the party of the first part, its successors or assigns, without any further consideration. Except as hereinbefore set forth, all improvements on said land are the property of said party of the first part, and it may leave the same where they now are, or remove them at its option.

It is further expressly agreed, that said party of the first part, its successors or assigns, shall at any time hereafter have the right to terminate this lease by giving said party of the second part one month's notice in writing; which notice may be served by
307 enclosing the same in a post paid envelope, directed to said second party, at said city of Negaunee, and mailing the same at any post-office in said county of Marquette; and thereupon, on the expiration of one month after the service of such notice as aforesaid, this lease shall be wholly terminated, and said party of the first part, its successors or assigns, will be entitled to the immediate possession of said premises.

It is expressly agreed, however, that said party of the first part retains and reserves to itself, its successors or assigns, forever, all minerals or ores which are upon or within said lands, with the right

at any and all times to enter upon said lands, and explore for, dig, mine, quarry and carry away the said minerals or ores, or both, and to do, or cause or permit to be done, on said demised lands, any and all acts necessary or convenient for said exploring, for digging, mining, quarrying and carrying away of said ores, including the laying of railroads or tramways upon and across said premises, without let or hindrance from the said party of the second part, his representatives or assigns; and that the said party of the first part, its successors and assigns, shall be in no way liable for any damages that may result therefrom and accrue to the said party of the second part, his representatives or assigns.

Said party of the second part shall not have the right to release or sublet said premises, or any part thereof, without the written permission of said first party.

Witness the hands and seals of said parties the day and year first above written, to duplicate copies hereof.

THE MANGANESE IRON MINING COMPANY,
By MARY BREITUNG, *Pres't.*
JACOB SCHNEIDER. [L. S.]

Signed, sealed and delivered in presence of
J. M. EDGERTON,
As to Mary Breitung, P't.
F. E. PEARSE.

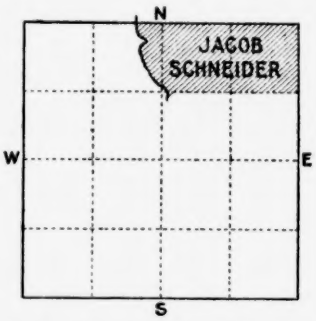
308 STATE OF MICHIGAN, } ss:
County of Marquette, }

On this first day of October in the year one thousand eight hundred and eighty-nine before me, the subscriber, a notary public in and for said county, personally appeared Jacob Schneider, to me known to be one of the persons described in and who executed the within instrument, who acknowledged the same to be his free act and deed.

J. N. EDGERTON,
Notary Public in and for Marquette County, Michigan.

"EXHIBIT A."

Description.—The north half of the northeast quarter (N. ½ of N. E. ¼) and about five acres on the east side of the north half of the northwest quarter lying between the east line of said N. ½ of N. W. ¼ and the Negaunee creek. All of said lands are enclosed by aforesaid fence and creek. Thus located in section (7) seven town 47 N. range 26 W. in the city of Negaunee, county of Marquette and State of Michigan.



MANGANESE I. M. CO.,
By MARY BREITUNG, *P't.*
JACOB SCHNEIDER.

In presence of
J. M. EDGERTON
As to Mary Breitung, P't.
F. E. PEARSE.

I remember calling on the 26th of December, 1899, on some men who had gone on these lands in section 6. They were building a wooden shanty over a portable boiler they had just moved on there and completed the work. I went to them and asked them who was doing this work, and they said the Cleveland Cliffs Co.

309 Mr. HOYT: I move to strike that out.

I says, "This is our land, what authority have you for coming on here?" and they says, "We don't know, you will find out in Ishpeming," and I went away.

Cross-examination by Mr. HOYT:

I am admitted to the bar, was admitted in 1886. I have been practicing practically since then and have been in the employ of the Negaunee Iron Co. and the Manganese Iron Co. The Negaunee Iron Co. is a corporation of Michigan. I have never seen the articles of association. I have been acting as agent since about 1892 I think. I have not known of its doing anything, any business, excepting collecting rent from these tenants, that I have anything to do with. It wasn't mining ore during all that time, that I know of. If it had been mining on those lands, I think I would have known it. I might have known of it if it had been mining on any other lands in this county, and I might not. I never have known of its mining ore. Before I represented the Negaunee Iron Co., I repre-

sented the Manganese Co. I understand that that is a Michigan corporation. I understand the Manganese Iron Co. has a lease of these lands, about which I have been testifying, from the owner, Edward Breitung, or whoever owned the land. That company didn't do any business other than merely having me collect the rents of those people that were on there that I know of from the time I took charge of the lands. They didn't do any mining on that land that I remember. I suppose it was a mining company at that time.

It was in 1892, as near as I can remember, that I began working for the Negaunee Iron Co. I don't know the stockholders. Mr. Kaufman is the officer of that company who has been giving me directions mainly. I have had some business with Mr. Breitung too.

310 I have not been employed in working up testimony in this suit. I have not had anything to do with this suit. That map to which I have been testifying was prepared I think by Mr. Jones.

Q. You can't swear to the accuracy of that map, can you?

A. Well, so far as I know, it looks to be correct.

Q. All you know is as far as you know it isn't correct, is not that about right?

A. Well, as far as I know the map is correct.

Q. Do you mean as a lawyer and an officer of the court, not having prepared that map at all and having gone over these lands and looked at them merely with your eye, swear to the accuracy of that map? Do you have as little regard for your oath as that?

A. I took charge of this land in 1889 and in 1890 I prepared a map myself, and that made me very familiar with this land.

Q. You are not a surveyor?

A. I have studied surveying and also with the surveyor and helped them to measure the lands.

Q. What you are testifying to, you think that map is correct, isn't it?

A. So far as I know the map is correct.

Q. So far as I know the map is correct, but that is not your notion of competent testimony to prove a map, is it?

Mr. ELDREDGE: I object to that.

A. I wouldn't swear it wasn't correct.

Q. Will you swear that it is?

A. So far as I know and to the best of my knowledge.

These people who originally went on this land were squatters and renters. I don't know whether they were mostly squatters or not. I don't know whether when I went in there in 1889 they were mostly squatters on the land. They had been on there for years when I took charge of the land. They have been paying rent according to their ability to pay, from 25c. a month to $5 a month.

311 I found leases there, such leases as have been shown you, that same form that I have now—all that were signed. I couldn't tell you how many, may be fifty. I have now, I

should think, somewhere in the neighborhood of eighty. I won't swear that there were fifty when I went on there, I don't know.

Q. Will you swear that there were ten?

A. Oh, yes.

Q. When you were there in 1889?

A. Yes, sir.

Q. Leases of that form; will you swear that there were ten signed, executed leases of that form when you went there?

A. Well, I couldn't swear——

Q. Answer the question, yes or no.

A. Yes, I will swear that there were ten leases, more than ten.

Q. In that form?

A. Yes, sir.

I will swear that there were ten when I was there in 1889. I think there are about eighty now. I couldn't tell you exactly, I haven't counted them. I couldn't tell you the amount of rent I have collected, it differs in different years, some years $300 and some years $600. I could not tell you that that is the most I ever collected in a year. I render accounts, but I don't remember now. I keep an account book. It is in my office. I will bring it if you want it. That account book shows the amount of rent they pay to me, it doesn't show what leases they have. Those leases are all in duplicate; they are all in the office in Marquette, all those that are in force now. They were sent to Mr. Breitung or the Negaunee Iron Co. office. I made my last report to Mr. Kaufman. That Jerry Redy who was a witness here yesterday, is not one of the tenants. It is his brother I think. These leases run from month to month. They are all leases at will; they may run for 20 years and may run but one month.

W. H. JOHNSTON, sworn on the part of the complainants, testified as follows:

312 Direct examination by Mr. SHAULL:

I reside in Ishpeming. I am the agent of the Lake Superior Iron Co. and the Regent Iron Co. and superintendent of the Oliver interests in Marquette county. I am familiar with the Queen mine, Blue mine, Prince of Wales mine and Buffalo mine, situated on section 5 in the city of Negaunee. The Prince of Wales occupies part of the northeast ¼ of the southwest ¼ of section 5. The Blue mine occupies the southwest ¼ of the southwest ¼ of section 5. I am not quite sure as to the acreage. I think the Blue and the Queen go into the south ½ of the southeast ¼ of section 5. The Buffalo is in the northeast ¼ of the southwest ¼ I think. I am somewhat familiar with the improvements and equipment, machinery and buildings, etc., on the lands which have been described as occupied by these mines.

Q. Will you state in a general way what the value is of those permanent improvements?

Mr. HOYT: I object to it as incompetent and immaterial.

A. I could hardly fix a cash value on the improvements, but there is an equipment there sufficient in those four mines to handle from 2,000 to 2,500 tons of ore a day.

They have, as I just stated, sufficient equipment for them to handle that amount of ore at the present time, about 2,000 or 2,500 tons per day, if they are crowded. I should think the buildings and machinery—the buildings are not expensive buildings, the shafthouses are not very expensive shafthouses any of them, but I should say they would exceed in value fifty thousand to sixty thousand dollars in value anyway.

Cross-examination by Mr. HAYDEN:

I think the Buffalo mine is in the southeast ¼ of the section 5. I think the Prince of Wales, the Queen, Blue and Lucky Star comprise the southwest ¼ entirely, but I am not quite certain as to the exact descriptions in those 40's. The Regent Co., my com-
313 pany, holds a lease of one of the Buffaloes—the Buffalo. There is a south Buffalo; they have simply a lease for stocking ore on that surface right. We are not mining any ore from that shaft. That has been practically abandoned. We have also a lease of the Buffalo. I don't remember when the Buffalo lease was granted.

The Regent Iron Co. came into possession of this property the Prince of Wales and the Queen and the Blue I think in April, 1899. I am not quite certain as to dates. I think that at the time the Regent obtained a lease of those, they also obtained the Buffalo lease at the same time, that is they got all the properties at the same time. I wasn't appointed its agent until sometime early in November. I cannot say that I know exactly who the owners of the fee of the Buffalo are. I know the Arctic Iron Co. has an interest in some of this property and the Pioneer has an interest in some of them. Very often we don't send the royalty statements direct to the owners. They are sent to our general office at Pittsburgh and from there forwarded to the owners.

There is no communication between our local office and the lessors, the owners of the fee. I don't know whether it was a new lease from the Buffalo or an old lease executed sometime before I got it, at the time the Regent Iron Co. came into possession of the properties. I have not had any business with Mr. Breiting or Mr. Kaufman in the management of these properties, the Blue and the Queen. I have not so far come into communication with them at all. We have had no business transactions—I have not.

C. C. JONES, sworn on the part of the complainants, testified as follows:

Direct examination by Mr. SHAULL:

I live in Marquette. My business is consulting mining engineer. I began the survey in May last year, on sections 5, 6, 7 and 8. The map you show me marked Exhibit T, is a map I made, a
314 blueprint of the map I made from actual surveys. It is an accurate map. It correctly represents the parcels of land shown and represented by figures, marked from 1 upwards. I am familiar with the lands on sections 6, 7, 8 and 5 in tp. 47 north of range 26 west, that are covered by this 99 year privilege of 1857. I have been over those lands frequently in making my surveys. The first time I was over this land was in November, 1899. I have been on them frequently since then; sometimes every day for a week or so at a time. I am familiar with the mining exploratory work which has been done on these lands prior to Christmas, 1899.

Q. Taking up what is known as the West New York Hematite 40 what work has been done there prior to Christmas, 1899?

Mr. HAYDEN: That is objected to as incompetent, and as it now appears, irrelevant.

A. The remains of the work on the ground just at the west line there is a large pit 175 by 100 feet to the depth of about 60 feet; just east of that there is another pit 150 by 175 feet and about 60 feet deep; the first is marked 6 and the last one is marked 7. This map I hold in my hand is made by me personally from surveys I have personally made. I consider it an accurate map. It correctly represents the explorations and mining operations that have been carried on upon this land from time to time. They are put there from actual measurements. Just east of pit No. 7 and a little south is another pit about 25 feet by 30 feet and 15 or 20 feet deep, a small exploration. Going around the hill there are numberless little trenches and pit work where ore had probably been found; the remains of the surface ore are there. The bottom of No. 6 is so closed up you can't tell whether a continued exploration would show ore. Walls have all the appearance of
315 having been associated with an ore body. It doesn't appear that the ore is entirely worked out in that way; it is too much of a surface pit. The same applies to pit No. 7. No. 8 is too small a pit to say much about. It shows ore. These smaller pits show that there is an iron formation there. It would be too much mixed rock and ore to call it ore. It simply shows the iron formation. What I have described includes all the exploratory work which has been done up to the present time upon that 40 south of the railroad track, as represented on the map which I hold in my hand, except some work which has been covered up. One shaft sunk close to the line of the L. S. & I., which is covered up and

nothing but the debris. It doesn't show anything except the iron formation. On the east New York Hematite there was a small shaft about 30 feet deep, as I was told, and from appearance it appeared to be so, although there was some filling in and excavation. A number of cars of ore had apparently been loaded and the beginning of a shaft about 10 feet deep a little to the west of that where they had been taking off the surface. The first I speak of is No. 9 and the second 10. I am speaking of the conditions previous to any operations of these defendants. There was no further explorations on this piece. On the Baraga property there are two shafts between the county road and railroad, the north part of that fractional piece. The spot is marked shaft. It is between the road and the railroad, the north part of that fractional piece. I don't know personally how deep that shaft is. It is now used as a well. From the appearance there was a little slaty material taken out and scattered around on the surface. There are the remains of another shaft in the southwest corner. That is marked upon the map D. D. That is a mixed stuff; you couldn't call it ore, it has been taken out of it. I understand there was a drill hole in the bottom of that shaft.

316 Mr. HAYDEN: I move to strike that out as incompetent.

That was all on that description. On the northwest quarter of the southeast quarter of section 6, near the D. S. S. & A. Ry. track, at the circle marked "shaft," there are the timbers of an old shaft still in place filled with water. It is quite a pond of water now. The formation there is simply sand, quicksand. On the northeast quarter of the northwest quarter of section 7, known as the Aetna, there was a large number of open pits in very irregular form; beginning on the west side there is a long cut there in the face of the hill just above the railroad grade; a deep pit below the railroad grade with the remains of an old shaft at the bottom of that pit. These openings are very irregular in shape and starting at the upper northwest end, that upper one would be 100 by 50 feet. It then goes into the hill about 50 by 70 feet and the next pit about 90 by 80 feet and the round pit next to the railroad about 50 by 70 feet and 60 feet deep. South of the railroad there is another small pit about 20 feet deep and going up the hill the remains of another shaft. There is ore on the dump from this pit 50 by 70 feet and 60 feet deep. There is still a pile of ore taken from that shaft. That series of pits are in the iron ore. Going east from the pit just spoken of, there is another pit 35 feet in diameter; that would be about one-third of the distance from the section line, two-thirds of the way across the 40. That pit shows in ore. It seems to have been an exploring shaft in the bottom of that pit. It is in lean ore. Going on east we come to a long open pit 300 feet long by 80 feet wide and about 35 feet deep. Going over into the other, the Shad property, near the north quarter post, there is the appearance of ore having been taken from this pit,
and ore still shows in the upper end of it. The grade of it I
317 couldn't say. The spot marked "shaft" near the south line of the 40 is an old exploring shaft. It showed nothing but

the iron formation. The spot almost on a line from the shaft last spoken of on the west side is a pit about 75 by 75 feet in diameter and about 30 feet deep into the face of the hill, showing that ore had been taken from it. There are pieces of ore scattered about that, seeming to be a fairly good quality. The ore from that pit has not the appearance of being exhausted. On the 40 east, the Shad 40, there is a pit about 78 feet by 85 feet; at the west side of that there is the west pit there. The other side of the track from the point marked N I have already spoken of, this long pit which goes over the line; that is just a continuation of the previous pit. It is one continuous matter. The ore was followed straight into the hill. The same quality of ore. The pit just west of the railroad is 78 by 85 feet and 60 feet deep, and at the time this pit was pumped out the evidences of these drifts and channels were seen in the bottom of that pit. That work was done in April, 1899. The ore has all been taken away that was in the pit. I couldn't find any pieces on the surface, nor could I at any time get down in the bottom of the pit. The water never was exhausted. The drifts appear to be going into the ore. I don't know the quality or grade of it. The round spot marked N, immediately to the east and north of that, is a shaft, a timbered shaft 12 by 12, which I afterwards found when it was pumped out, was in the neighborhood of 40 feet deep. That shaft is in a medium grade of ore. I don't know the analysis of the ore. When I speak of the medium grade of ore, I mean an ore that would run somewhere about 50 per cent.

Mr. HAYDEN: I object to that as a guess and as incompetent also.

318 The small red mark on the map in the southwest corner of the 40 was a small test pit on the hill there showing the lean ore. I have visited all these places personally. I have not visited any other explorations upon this west Shad 40.

Taking the next Shad 40, being the northeast quarter of the northeast quarter of section 7, the oblong place indicated on this 40, is a long open cut about 300 feet long and the upper end about 100 feet wide and the neck of it about 40 feet wide. There is nothing at the point indicated. There is a drift into the side hill that was about 50 feet. That cut in its deepest part would be about 35 or 40 feet. This drift is entirely in the iron formation. It couldn't be called ore. From the appearance, a highly manganiferous ore has been taken out of there. There are no other exploratory pits or shafts upon that 40 or mines that I know of. At the Davis property, south half of the northwest quarter of section 7, at the present time there are two shafts, an engine house, boilers and small stockpile of ore. There is a hoisting engine and boilers. It is a combination boiler house and engine house. I never had an analysis made of the ore there. I have not been able to find out whether that was some of the preliminary ore thrown out or whether it was ore mined in the regular course of the operations. It looked like fair stuff.

Mr. HAYDEN: I object to that as incompetent.

I have never been down in the mine. It is filled with water. The open pit extends west of the Milwaukee mine and extends over into that 40. It would appear that there has been a good deal of ore taken out from that pit. It appears to have been exhausted down as far as that pit goes. The ore body is said to continue underground to the lower levels.

Mr. HAYDEN: I object to that as incompetent.

319 I am unable to say how deep the pit is. The pits are all filled with water. There is nothing else in the way of exploratory work on that 40 except in that abandoned shaft. There is a little pit south of this working shaft. I should say it was one of the first exploring shafts on the property. That is not marked on this map. There has been a railroad there; the old ties are on the ground, the grade is there, rails pulled out. Passing to the 40 east, known as the Milwaukee mine, being the southeast quarter of the northwest quarter of section 7, and taking up the test pit, a portion of which runs over on the Davis property, we were unable to take the size of those pits. The last section was flooded with water, you can't get close to it. I think it must be a very large pit, for the statistics I have had show that there was 475,000 tons shipped from that.

Mr. HAYDEN: I move that that be stricken out as incompetent.

I couldn't measure the pits. I don't know how many of them are there. The water runs right across the surface land. I have no means of knowing whether the ore is exhausted in these pits or not. I have only the opinion of the last man who worked there. I have been across the Wheeling and Jefferson tracts in several different directions. I have been unable to find any explorations in the southeast quarter there. In the northeast corner of the southeast quarter of section 7 is the Himrod. There is a large open pit in the side hill there 90 by 75 feet and about 50 feet deep, and the neck of that open cut before it widens out is apparently a shaft, how deep I couldn't say. It is filled with water. There is lean ore still in the place there. The ore resembles the Milwaukee mine. I should judge it is the same quality of ore. On the north line of the east Himrod 40 was a shaft, marked shaft on this map. I am
320 unable to tell anything about the depth of it. The shaft timbers are in place and that is all. The debris is a scattering lean material with some particles of good ore mixed in. I couldn't tell what the grade of ore was that they got out of that shaft. To the southeast of that shaft is an open pit about 60 by 60 feet and 20 feet or so deep, marked on the map with a circular red ink mark. The ore removed from this pit is only of fair quality by the appearance. I have not analyzed any of this ores. The probabilities are there is some material there of the same class. The pit has the appearance of running on in the same material.

Mr. HAYDEN: I move to strike out that answer as a guess.

Over to the east side of the Chicago & Northwestern Ry. track is a small shaft, I suppose 10 by 15 feet deep, indicated in this map, an exploring shaft. It is in the iron formation. In a southeasterly direction from that and down along the railroad track is a small cut 25 feet or so in diameter; that is in the iron formation, no ore apparently in it. The circular red mark on the south half of the southeast quarter of section 7, the Chicago property so-called, is an open pit known as the Chicago mine, 50 by 60 feet, the remains of an old shaft and timbered, and drifts going off into the hill. There is a stockpile of ore from this pit still standing out between the road and the railroad. The stockpile is pretty well diminished now, some has been taken for the road there, possibly 900 tons or so of material. It is only a fair quality of ore. I don't think it would run more than 45 or 48 per cent., something like that. On the northwest quarter of the northwest quarter of section 8, known as the North Bay State or Green Bay 40, there are a number of small test pits around
321 the hill there, just mere surface scratchings, which show the iron formation, and a little mixed ore. Some of them are 6 or 8 feet deep and 4 feet and trenches. That large cut west of 8 is probably 50 by 30 feet. That showed ore of a lean character. It is about 20 feet deep.

Q. From its appearance, would you say the ore had been or had not been exhausted?

Mr. HAYDEN: I object to that as incompetent.

A. I should think there was more ore there. That marked "H" shaft is one of the new explorations. Southeast from the H shaft is another new exploration. On the 40 east of that, the shaft marked J shaft, is a small exploring shaft, but not deep I think; the depth I don't know. It seemed to cut in the ore formation. No ore was shipped from it that I know of. Over in the northeast corner of that 40 is a new exploration; that is the North Tracy 40. On the South Bay State or Green Bay 40 at the west side there is an open cut about 60 by 53 feet, and a long arm of it about 126 feet by 30 feet. There was a drift from one side of this on the northwest side about 30 feet. The other drift is recent work. That pit would be in the neighborhood of 30 feet deep. It is in the ore formation and the sides in iron ore. The ore would be classed as a lean ore.

Mr. HAYDEN: I object to that as incompetent.

Q. State whether or not that is a manganiferous ore that we have heard about, is that the pit?

Mr. HAYDEN: I object to that as leading.

A. The ore had the appearance of having manganese in it, but that is not the manganese pit; that was on the manganese 40. The pit I have just spoken of is marked M. Immediately to the south-

east of that is where a drift was cut into the hill, practically in the same material. That is a medium or lean grade. It is a medium ore. That pit must have been cut 100 feet into that formation.

Q. Does the formation or material have the appearance of being exhausted?

322 Mr. HAYDEN: I object to that as incompetent.

A. I think not. Recent explorations have been made in this formation from the beginning of this cut and drift run. East and south of that exploratory work, the shaft or diamond drill hole marked D. D. is recent work. Those red marks north of that indicate a kind of bluff or material and it seems that a good deal of ore has been blasted off and taken down. That is in the iron formation. There is no ore to speak of there, but the formation is a favorable one for ore. Passing on northeast, a shaft was sunk where it is marked "shaft." There is the form of an old shaft and a pile of ore, fairly good looking ore, lying near it. I suppose there is 50 or 75 tons there. The other marks indicating mining work northeast of that are cuts in the side of the hill in this bluff I speak of, showing where ore has been taken out and shipped. I- runs along there for 200 or 300 feet. The formation is cut into with these cuts 200 or 300 feet in the face of this hill. It is very irregular; it is hard to get an accurate measurement. The whole base of the hill seems to be in the ore formation. All that ore there is a fair quality. On the 40 just east of that, the South Tracy 40, is a continuation of the same formation, and same ore in face. There is still ore standing in those cuts and drifts have been recently driven in since December, 1899. There is quite a long strip of outcropping there, perhaps five or six hundred feet. Near the highway there is a little surface cut into the iron formation. It doesn't show ore, merely a prospect on the surface for ore. South of the highway and between that and the south line of the 40 is a shaft which I have never been in, because it is closed over. The little open cut near the line is merely an outcrop of the formation put on the map; it isn't ore, simply the formation. On the southeast quarter of 8 there is a shaft which

323 I was unable to get into, because it was filled with water and closed up. There is a shaft, as I understood, 96 feet deep, and the pile of material lies alongside of it, and is of a lean ore formation, a very favorable lean ore formation.

Q. Do you know whether there has been any cross cutting or any mining done there?

A. Well, no, I only know from the man who did the work that the shaft that was put in there about 96 feet and about 30 feet of cross cut off the bottom.

Q. Dropping down further, I see a point marked DD?

A. That is all new work. All the rest of the quarter is new work.

On the southwest ¼ of the southwest ¼ of section 8, one of the Star 40's so-called, is a shaft indicated on the map by the west red mark.

It appears to be in the ore formation. There is a mixed ore in the material taken from the shaft.

Q. Do you know how deep it is?

A. I understood it was 140 feet with a 75 foot drift off from it. I don't know whether any ore was shipped from it. There is a stockpile, a small amount of material, mixed up with the surface. East of that is a pit 60 feet by 40 feet, how deep I don't know. It is filled with water, and a pile of ore is alongside of it. The pile extends 4 or 5 feet deep around this pit. It is a lean formation for prospecting in. I think there is more material there.

Mr. HAYDEN: That is especially incompetent.

On the northwest ¼ of the northeast ¼ of section 8, there are two shafts marked one immediately north of the other with debris taken from them, the material taken out of a lean slatey character, how deep I don't know. I am familiar with the property on section 5, known as the Lucky Star. There is a shaft near the center of the property, how deep I am unable to state. It appeared to be 40 feet at least. There is a pile of ore around it that was taken from
324 it, a lean ore formation, and this is the top surface or lean ore that was taken out of it. The other place on the 40, indicated by D. D. is a diamond drillhole. It was in ore, the quality I don't know, and just south of there, not indicated on the map but in that little triangle between the railroad and the corner of the property, are a number of pits and open cuts in the ore formation, an ore mixed. The material is simply indicative of ore which is in the ore formation.

I am familiar with the Prince of Wales and the Queen and the Blue mines. The Buffalo was closed before I came. I simply put it there to show it. Those are large bodies of ore. With the present equipment I should judge if they were pushed they could raise 3,000 tons a day. From the openings underground they could mine that much as a fact, working 300 days in a year. Last year they raised an average of 1,000 tons a day. I believe they shipped several qualities of ore from that mine of non-Bessemer quality of ore, that would run anywhere from 55 per cent. to 65 per cent. or 66 per cent. They have the usual mining equipments to handle a mine of that size, boiler and engines, roads, tracks, steam-shovels and machine shops.

This claimed trespass was committed in the last week of the year 1899. The 40's entered upon were southeast ¼ of the southwest ¼, section 6; the southwest ¼ of the southeast ¼, section 6; the southwest ¼ of the northwest ¼, section 8; the northwest ¼ of the northwest ¼ of section 8. Since then they have entered on the southeast ¼ of the southeast ¼, section 6; the northwest ¼ of the northeast ¼, section 7; the northeast ¼ of the northwest ¼, section 8; the southeast ¼ of the northwest ¼, section 8, and the northeast ¼ of the southwest ¼, section 8. They entered also on a piece of land in the northwest ¼ of the southwest ¼, section 5, the Lucky Star property.

On the southeast ¼ of the southwest ¼ of section 6, they drove a drillhole down at the points marked D, started in January and finished in about October, 1900. That is all the work on that
325 quarter section. On the southwest ¼ of the southeast ¼ of section 6, at the point A. was the first work they did. They started to sink a pit there. It was carried down 10 or 12 feet and afterwards filled up. A few days later, a shaft C. that was enclosed with a wire rope or wire fence, was taken possession of and the old small shaft was enlarged and sunk deeper. I couldn't say how deep they sunk that shaft, but I should judge somewhere about 60 or 70 feet. It was 30 feet before then. Just alongside of that shaft a diamond drillhole was put down. South of the railway there, near that point marked 10, a small exploratory shaft or pit was put down there about 20 feet, and across the L. S. & I., near the west line, another small pit was put down about 15 or 20 feet. That is not indicated on the map—near the west line. Just at the quarter post another pit was sunk 15 or 18 feet, and at the point D., a small pit 4 or 5 feet deep was thrown out and filled. This is in the field,—a meadow, grass field. It has since then been covered. On the Baraga 40, the southeast ¼ of the southeast ¼ of section 6, a small pit was opened at E. which was afterwards only extended a few feet and covered. They sunk a drillhole at the point D. D. At the north point marked D. D., near the northeast corner between the county road and the railroad, a diamond drillhole was sunk. They were working about from May to October, or June to October. That is all on that 40. On the 40 known as the West Shad or Manganese 40, the northwest ¼ of the northeast ¼ of section 7, the shaft C. was abandoned and the machinery was moved over to this shaft, shaft N., 12 by 12, shaft N. That shaft was in the neighborhood of 40 feet deep when they took possession, a diorite shaft timbered in good condition. They have taken that shaft to a depth of probably 75 feet, as near as I could judge, from watching the hoisting. The same quality of ore has been developed that was there at the beginning. There is a point not marked on the map down in the middle of the 40 by the road where a small pit was sunk in front of one of these houses, but nothing was found. A little work is also done in that cut in the southwest corner.

326 They entered on the Manganese 40 sometime in March, 1900, took possession of the long Manganese cut and started to extend it. That is indicated on the map as L. They took possession of the drift and started to extend that drift. They extended it just a few feet and abandoned it. They discovered the same material. It is in the iron formation. They didn't run into the wall of diorite, anything of that kind. Just inside of that drift about 27 feet, they started to sink a shaft in the bottom of it, and carried it down a few feet and abandoned it, and then started a shaft outside of the shaft marked with a ring around it. The shaft is 56 feet deep in the same material the cut is in. It seems to be highly manganiferous iron ore, a fair quality, the same material in which the

shaft started and shows no change throughout. That is the extent of their work on that 40.

On the Lucky Star, the northwest ¼ of the southwest ¼ of section 5 no work was done. Some men were there for a day or so and stopped. No actual work was done. On the North Bay State property, the northwest quarter of the northwest quarter of section 8, beginning at the west side, a number of small test pits were dug, and some old test pits cleaned out that were already there. Those were afterwards closed. The shaft marked G was put down as a mere temporary prospecting shaft with poles on the side to hold the ground and sunk probably 25 feet or 20 feet. The material out of the shaft was wasted around the border of it. Abandoning that, the timbered shaft, 6 by 10 inside, was started in January, 1900, and continued about May. This shaft I should think was in the neighborhood of 40 feet deep. The material thrown out is a lean material, very much the appearance of that taken from the open cut alongside of it, a lean ore formation. The material was wasted around in the field and grass. That is all on that 40. On the North Tracey 40, the northeast quarter of the northwest
327 quarter of section 8, January the 15th, the small exploring shaft that was there previously was taken possession of. That is the shaft marked J. That was deepened and work was continued until about May the first. I have no way of telling how deep it was sunk, except by looking at the rope and wind of the engine. I should judge it was 75 feet deep. They found nothing but the same material, lean ore formation. On May 1st they abandoned sinking the shaft and in September a diamond drill hole was drilled. Drilling was continued from May 1st to November 10. That drill hole is in the bottom of shaft J.

Q. How deep did they sink that diamond drill hole, do you know?

A. I have no idea. I could guess at it from the time of beginning work, about 600 or 700 feet.

Mr. HAYDEN: You are not going to guess, are you? I object to the question.

The diamond drill was moved November 10 over to the northeast corner of the 40, and a hole sunk there. That work continued up until January, 1901. That was all the work I know of on that 40. On the South Bay State or the Green Bay 40, the southwest quarter of the northwest quarter of section 8, about the middle of April, 1900, they took possession of that open cut marked N near the west line of this 40 and started a drift just alongside of the letter M there. This drift was worked out off and on, a drift about 6½ feet high and 4½ feet wide, or something like that, a mere exploratory drift under the hill going off east. It is in the same formation now as it was when they started in, about 40 or 50 feet. Work has not been done there that I have seen for probably two or three months. The material has been wasted just in front of the

pit, in the old open cut. It doesn't differ from the open cut material taken out before. Jan. 1, 1900, they started in that
328 drift F near the east line, extended that a few feet and abandoned it. It was in the lean formation when they started and when they quit. The material out of that is on the dump there. Oct. 15 a diamond drill was installed at the point marked D. D. close by the side of the road. They worked with the diamond drill from October 15 to November 12, 1900. That is all the work done on that 40. On the South Tracey 40, the southeast quarter of the northwest quarter of section 8, a drift has been driven into the hill in the old workings I have previously spoken of, being on this Tracey 40 at K. The drift was started in the face of this ore material which is there, April 26, 1900, and they worked off and on spasmodically during the summer or alternated between the drifts M and K on the other 40. The material from that drift they wheeled out on the dump at the foot of the hill. It is the same material from the beginning to the end of the drift. That drift is in about 15 feet. That is all on that 40. On the Brickyard 40, the northeast quarter of the southwest quarter of 8, the drill was moved from the South Green Bay November 12, 1900, to the point marked D. D. and the hole put down there. On finishing this hole it was moved over to the several points marked D. D. I spoke of the west, the east one by the road. Completing that work the drill was moved next to the red point there marked D. D. Work there has been a continuous matter from November 12 up to the present time, from one hole to another on this 40. They bored the next one to the road first, then moving west they bored the middle one and moved west and bored that one, and moving north they moved that one marked D. D.; then moved south to the other side of Partridge creek and they bored that one. Now they are working on that one, and the next one north right under "C" of the brickyard. They have the usual drill force at a drill
329 there; sometimes one other to put down the stand pipe. They might have more, one or two more men than the usual. The usual number of a drill crew is two men and a diamond setter before they commence to put down the standpipe; they would have, according to the circumstance, all the men necessary, a drill runner and helper, if the ground was good. When they went on there first I counted 18 men the first entry at different places. I think 18 men was about as many as I ever counted at one time working on these lands. I have described all the work they have done on these premises. They have been continuously there from the time they entered up to the present time.

Cross-examination by Mr. HAYDEN:

In referring to my direct examination to new work on these several properties, I mean the work now being conducted. Altogether 11 drill holes have been sunk by the people now conducting opera-

tions there. They now employ one drill in the work. At one time there were three or four diamond drilling machines. I never did any diamond drill work, nor had charge of any. I never manufactured drills nor instructed anybody in the use of them. I never have had anything to do in any way or in any capacity with diamond drilling. I have no way of knowing of my own knowledge how deep the deepest of these 11 holes were sunk, except by counting the rods as they were raised out of the pit, or something like that. I have no certain knowledge. They did work on both forties in section 7, on the north half of the northeast quarter, that is the Shad or Manganese. They have not done any on the south half of section 7, that is the rolling mill property, that is not in this case. The south half of the northeast quarter is the rolling mill. There is no work done on the
330 south half of the section, none that I know of. I have visited it possibly three weeks ago. I visited the Prince of Wales and the Blue and the Queen properties for the first time in December, 1899. I first came to this county on the 10th day of October, 1899. I had never been in the county before. What I described at the Prince of Wales, Queen and Blue, etc., was what I saw at this time in 1899. When I said I understood shaft on the west Star 40, indicated with a red mark, was down 140 feet, I mean that the son of the man who did the work, Mr. Maas, told me so. All I know about it is what somebody told me.

Mr. HAYDEN: I move to strike out the testimony for that reason as to that shaft.

As to the Brickyard 40, I have it from the man who put down the shaft there, that it was 96 feet deep. All I know about it is from the man who put it down.

Mr. HAYDEN: I move to strike that out for the same reason.

I think that it would be very hard to say in so many words what I mean by very favorable lean ore formation. Those are things that a man can know rather than describe in ore formations. These properties comprised in this suit are all in what is known as the Negaunee iron formation. That formation is made up of a series of slates highly colored and having the appearance of iron, that appearance I cannot describe to you; you probably know as well as I do, a dark brown or reddish, and the more that gets away from the slatey appearance into an appearance of hematite, giving the characteristic look of hematite, the more it varies from a lean ore into a good ore. A good favorable ore formation I should say would be one characteristic of the slates, having very much the appearance of iron, but the silica showing in grains or in the luster of the rock, giving you the idea in your mind
331 whether the silica predominates or whether the iron predominates; as the iron increased in percentage of the rock and the silica decreased, it became more and more of the class of hem-

atite, and in that way I judge whether the formation was good, lean or indifferent or fair. I have had a good many assays made from the various lean formations up there and from ore. I have no assays of a lean formation on this property. Therefore I cannot tell about the percentage on this property. I have done mining work in Virginia and in Georgia; in the State of Virginia I had charge of a property comprising 110,000 acres of coal land, in opening collieries from the ground up. At the same time I have had charge of iron ore formations in a formation entirely different from your Michigan formation. I have been in the formations or mines similar to the ore used in Alabama, a continuation of the formation through Virginia. I have prospected large areas of land. I couldn't state how many acres, but I suppose I have prospected 20,000 acres of those lands for iron ore and made reports on them. I wasn't on the property afterwards when they were opened up. Iron ore mines have been opened on these properties and they are now in a large Virginia and Tennessee combination. I have examined and reported on a great many properties for their iron contents after the work had been previously done by other men. In the State of Georgia I have opened up gold mines, the various departments of the mining carried on in the Southern States in gold. I have furthermore gained knowledge of iron ore as the assistant superintendent of blast furnaces of the Pennsylvania Steel Co. and had to do with iron ores, directing the purchase. We used to have the old New York and Lewis ore. In addition to that we had the ore from the other ranges, the names I don't remember. My principal knowledge of these ores came
332 from having charge of unloading the stock of all the ores at the four blast furnaces of the Pennsylvania Steel Co., and have sampled ores from all over the world, Spanish and Swedish ores and others. I am a chemist. I have done my own chemical work. I analyze ores myself. I was with the Pennsylvania Steel Co. two years and I resigned that position to take charge of the southern furnaces at Lynchburg, Va. I was there a year and they sent me down there to take charge of those lands. From there I was called home on the death of my father, and I was at home for a number of months in winding up the estate. From there I went to Central America, and I came back to the States and purchased some mines in northern Georgia. I was there for several years until called here by Mr. Breitung. I was in Georgia two years. There was an analysis made from the cut on the South Bay State 40 and I have been trying to put my hand on it, and I can't. I don't remember it. I analyzed it principally for manganese. I have not the assay. A pit 6 or 8 feet deep I call an exploring shaft. It is, more properly speaking, a pit; properly designated, it is a test pit. I understood from the analysis of the stockpile on the Chicago property that it will run 45 or 48 per cent. I didn't see any of the analysis. This statement wasn't upon any knowledge of my own. There are a great many abandoned explorations on these properties

I have described. I don't know from my own knowledge when they were conducted, or the persons who conducted them.

Mr. SHAULL: I would like to offer this map in evidence.

Mr. HAYDEN: We object to the map as irrelevant and incompetent.

(Map marked Exhibit V and accompanied this record.)

333 A. B. ELDREDGE, sworn on the part of the complainants, testified as follows:

Direct examination by Mr. SHAULL:

I live in Marquette. I am an attorney at law. I know Samuel Redfern. I have known him, I think, ever since I came into the county in 1882. I am familiar with his signature. I have no doubt that that is Mr. Redfern's signature on Complainants' Exhibit K which you show me, signed on behalf of the Iron Cliffs Co.

S. W. SHAULL, sworn on the part of the complainants, testified as follows:

Direct examination by Mr. ELDREDGE:

Q. I show you a pamphlet entitled "By-laws of the Pioneer Iron Co., Lake Superior, chartered under the mining laws of the State of Michigan," etc., also a circular of the directors concerning the business of the company for the current year 1857, with a cover on which is printed "Pioneer Iron Co." and upon which is written "For identification J. A. F.," and I ask you if that is the circular referred to by the witness Charles T. Harvey in his deposition taken upon notice of the defendants before James A. Farrell at Cleveland, on the 16th day of February, 1901, and marked by the commissioner Farrell before whom the deposition was taken for identification.

A. I will state that the circular I hold in my hand and to which counsel refers is the circular spoken of by the witness in his deposition at the time and place mentioned by counsel, and was marked by the officer before whom such deposition was taken for identification, by the initials of his name, in my presence and sight
334 and that the circular has ever since been in my personal custody and brought by me here today.

Q. It is in the same condition that it was then?

A. In the same condition it was then. The paper was introduced in evidence as a part of that deposition, or identified as a part of it.

Mr. ELDREDGE: I ask that it may be marked by the stenographer so as to be read in connection with the deposition.

Mr. HAYDEN: I object to it as incompetent and immaterial and no way — prove it under the laws of the State of Michigan providing for taking testimony *de bene esse*.

By-laws of the Pioneer Iron Company, Lake Superior, chartered by the general mining law of the State of Michigan, and organized in accordance therewith in the city of New York, April 18th, 1857; also circular of the directors concerning the business of the company for the current year, April, 1857. Circular to stockholders.

The object in view in the formation of the Pioneer Iron Company is to engage solely and immediately in the production of pig
335 iron of the best quality possible, from the unequaled iron ore existing in the county of Marquette, State of Michigan, generally known as the Lake Superior Iron Mountain deposits.

From the unquestionable proof of actual experiment in various and continued tests by many iron manufactories, both as producers and consumers, which have used the ore obtained from the well-known "JACKSON MINE" and others of like quality adjoining it, the following points or facts seem by general consent to be established:

First. That the iron ore, in its native bed, is of as pure quality and the easiest to be obtained by quarrying of any in the United States.

Second. That no ore now used is more readily or more cheaply converted into iron than these.

Third. That the quality of iron and steel made from this ore is acknowledged to be THE BEST IN THE WORLD, and WILL COMMAND THE HIGHEST price in any market, on account of its strength, tenacity and susceptibility of beauty of finish.

Scientific tests of the qualities of the ore may be seen from the following certificate, which was given by Professor Jackson upon an examination of ores forwarded by Charles T. Harvey from Marquette.

STATE ASSAYER'S OFFICE, BOSTON, *Sept.* 13, 1856.

I have made a chemical analysis of the samples of iron on section seven, T. 47, R. 27, near Marquette, Lake Superior, and find it to consist of the finest and best of iron, and like that of the Demmara iron ore, of Sweden, capable of making the finest kind of iron. It yields, by analysis, the following ingredients:

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	Per cent.
Peroxide *of* iron	98.02
Oxide of manganese	1.28
Silica	0.44
Lime	0.32
	100.06

The gain of 6-100 of a grain is from absorption of oxygen by the small proportion of pro*l*oxide in the ore which, in analysis, is converted into the peroxide; oxide of manganese, in the proportion found

in this ore, is very beneficial, and will render the iron capable of making the best of steel. I find no titanium, phosphorus, sulphur, arsenic, chrome or other injurious substances in this ore, AND AM ABLE TO CERTIFY THAT IT IS THE VERY BEST KIND OF IRON KNOWN IN THE WORLD, AND WILL MAKE GOOD CAST IRON IN THE BLAST FURNACE or fine bloom and bar iron in the forge.

The ore contains 68.644 per cent. of pure iron, but the practical yield in the furnace will be somewhat less, as some oxide of iron is lost in the cinders and slag as the ore comes from the mine; it will probably yield about 60 per cent. of cast iron in the blast furnace.

(Signed) CHARLES T. JACKSON, M. D.,
Assayer, etc.

The annexed official statements will serve to show the strength of iron manufactured from the Marquette ores:

In Foster and Whitney's Geological Report to Hon. Justin Butterfield, Commissioner General Land Office, Senate Documents, Special Session, March, 1851, page 80, they say:

"To show the comparative quality of this iron, we give the results of the various experiments of Professor Walter R. Johnson on the tensity of bar iron from localities both home and abroad."

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	Strength per lbs. sq. inch.
Iron from Salisbury, Conn., by means of 40 trials	58,009
Iron from Sweden, by means of 40 trials	58,184
Iron from Centre Co., Pa., by means of 15 trials	59,400
Iron from McIntyre, Essex Co., N. Y., 4 trials	59,962
Iron from England (cable bolt) N. Y., 5 trials	59,105
Iron from Lancaster Co., Pa., N. Y., 5 trials	58,661
Iron from Russia, 5 trials	76,069
Iron from MARQUETTE, Lake Superior, 1 trial	89,582

While the best ore of England produced 41-100 per cent., the best ore of France 31 89-100, the best ore of Illinois 56 2-100 per cent. of pure iron, Lake Superior produces 69 15-100.

Letter from D. B. Martin, engineer-in-chief United States Navy, to J. C. Dobbin, Secretary of the Navy, Washington:

OFFICE ENGINEER-IN-CHIEF, *September* 12, 1855.

"A piece was drawn down to 1½ in. diameter (round) made into a chain link, tested in the chain-proving machine, and broke at 75½ tons, or 169,120 lbs.

(Signed) "D. B. MARTIN,
Engineer-in-chief."

In addition to the above facts, it may be well to add others, by stating that these mines are situated about 15 miles from Lake Superior, and that a locomotive railroad is so nearly completed that it

is expected to have it in readiness early the present season, by means of which ore or manufactured iron can be shipped with great facility to any portion of the country bordering on the great chain of lakes, of which Lake Superior is the largest.

There are tracts of hardwood timber lands adjoining these
338 mines not excelled in quality or quantity, of which the Pioneer Company's tract is believed to be the most desirable.

With these items of calculation established, the proposition seems self-evident that a moderate investment, judiciously made and skillfully managed, for manufacturing charcoal pig iron from these deposits, must prove a profitable operation.

The confidence entertained in these conclusions by the directors having led them to become identified with this particular enterprise, it is their intention to confine the expenditures of the company to the least amount necessary to enter upon the production of the single staple of pig iron in the best manner, and to bring the business to the paying point in the shortest possible time.

When this desideratum has been gained, the directors believe that the stockholders will prefer that the business of the company should be limited by its capital, and dividends thereon declared as often as may be, rather than to attempt, in event of success, an undue enlargement of operations and the consequent risk of a diminution in the percentage of returns; the reverse of this policy having been heretofore prolific of disaster to iron concerns in this country.

The business policy of the company having been thus intimated, the main items of its manufacturing facilities and resources will be briefly recapitulated.

Lands and timber.

The Pioneer Company's lands commence at the Jackson Iron Company's mining location (being bounded by the same north and south line for a half mile) and continue thence easterly along or near the line of the railroad as a continuous tract of over six miles.

It is actually traversed by about four miles of the railroad
339 track, and the average distance therefrom of all the lands is less than one mile. The company own in fee 3488 20-100 acres, and have the right to mineral and timber on 646 29-100 acres more adjoining, making a total of 4134 49-100 acres, or between SIX AND SEVEN SQUARE MILES OF LAND, which, for convenience of situation and quality of timber and soil, cannot be surpassed, if equaled, in the county.

The following letter was written by the gentleman who "located" or purchased of Government most of these lands some seven years since, and he has consented to its being published for information of the stockholders.

L. T. Merrill, Esq., secretary.

DEAR SIR: For the information of those whom it may concern, I will state that I located most of the lands in the Pioneer Com-

pany's tract in the year 1850, and from time to time afterward, with a view then to secure the best timber lands in the vicinity of the iron mine, my intention being to engage in the manufacture of iron myself, and so far was this plan acted upon that part of the machinery was actually sent forward to erect works on the water power at the eastern end of the company's domain. This purpose was frustrated by my health failing me, and my attention being called to other important matters at a distance.

Knowing the qualities of the company's lands, by careful inspection and repeated examinations, I do not hesitate to pronounce them the best, in situation and value for immediate use by a charcoal furnace, of any in Marquette county of the same area. My estimate is that they will yield from 60 to 75 cords of hard maple and yellow birch wood to the acre, besides which the pine timber of best quality, thereon, scattered among the other to the amount prob-
340 ably of two per cent., is worth in my estimation $5 per acre.

This land is also valuable as agricultural ground, and will sell, as such, for more than the original cost and interest, after the timber is entirely removed, so that the company will secure their fuel eventually free of stumpage cost.

Had my health been good and other circumstances not contravened my original plans, these lands would not have been disposed of to any other concern, but in consequence of the above reasons, I have consented to their sale, in consideration of the understanding that the purchasers will forthwith commence the erection of iron works, and thus put the lands to the use I designed for them, which, while it must yield extraordinary profits to the owners, will demonstrate the simplicity of and inducements to the production of iron in that vicinity and thus benefit that region and the whole country.

Respectfully, JAMES DUNCAN."

Chicago, Feb. 25, 1857.

The directors are of opinion that it is judicious policy to secure a heavy body of lands at an early day in that vicinity and a handsome advance in value on their cost, within a few years, may be anticipated.

At the usual estimation that a cord of wood will produce 40 bushels of charcoal, of which 125 bushels will furnish fuel to melt one ton of iron, and assuming that Mr. Duncan's minimum figures of 60 cords of wood to the acre are correct, the company's lands, it will be seen, will furnish fuel for nearly 80,000 tons of iron, or sufficient to supply two "stacks" for ten years. But, discounting 25 per cent. on these figures even, and the cost of standing fuel to the company will be merely nominal; and that, after removing the timber, the
341 lands can be sold at more than their cost (viz: $10 88-100 per acre) is not improbable.

Supply of ore and flux.

A written contract has been made by the Jackson Iron Company with the Pioneer, by which the latter is to be supplied with ore from the Jackson iron mine at a mere nominal rate per ton, which it is believed would be less than the company could mine the same quality on its own lands, if existing there.

This contract is for a long term of years, and will prove a valuable consideration beyond doubt. The company doubtless has minerals on its own lands, and also privileges of mining, free of cost, on other adjacent lands, should it at any future period wish to change the source of supply.

Abundance of limestone is known to exist near the eastern extremity of the company's lands, and can be furnished at the works, per railroad, at a very moderate cost.

Freighting facilities.

The site of the furnace is expected to be such that while one track takes the ore and coal to the top of the furnace, the cars of the Marquette & State Line railroad will receive the iron for shipment at its base.

A letter received from S. B. Ely, Esq., president of the road, by one of the stockholders of this company, gives it as his expectation that the road will be so far done that the locomotive will do freighting business to the Jackson mine and Pioneer lands in the month of June ensuing. Assurances have been given that the charge for freight will not exceed over the road 75 cents per ton to Marquette, from whence it can be sent for $3 per ton (or less) to Chicago or Detroit, and supplies, as return freight, will not cost but about the same rates, in proportion to bulk.

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Cost of furnace and buildings.

It will be noticed in a letter from Mr. Givan printed on another page that the cost of the blast furnaces and buildings, of which he has charge, was, in round numbers, $25,000. Although, as an ordinary rule, the same structures would cost considerably more at Marquette than near Detroit, yet the directors are of opinion, judging from such information as can be now obtained, that the outlay required to erect a furnace of equal capacity will not exceed that sum, and they are in hopes may not equal it; but they have estimated that amount, $25,000, as requisite, and to be provided for during the present season.

Cost of manufacturing pig iron.

At the Pioneer Iron Co.'s furnace—estimate for one ton.

Fuel and materials.

125 bushels charcoal, 5 cents	$6.25	
Flux	.50	
Ore delivered	1.50	
Add contingencies	.75	
		$9.00

Labor and expenses.

Wages of 15 men at $1.50 per day, salary of agent, clerk hire, repairs, oil, etc., say $50 per day, or, per ton	5.00	
Cost freight to Chicago	3.75	
Discounts, insurance and commissions	2.00	
		10.75
		$19.75
Add a profit per ton of		18.25
Will make the present cash price of that quality of iron in the western market		$38.00

343 To show the basis of the above calculations, a letter of Mr. Given, general agent of the large iron establishments at Wyandotte (near Detroit), Michigan, is appended as follows:

DETROIT, *March* 3*d*, 1857.

Charles T. Harvey, Esq., Marquette.

DEAR SIR: In answer to inquiries as to results of Eureka Iron Company's blast furnace at Wyandotte, I would say that by actual experiment and careful examination we find the following data established in reference to the making of Lake Superior ore into pig metal at our works.

The ore from the Jackson mine has yielded in our furnace over 65 per cent. of merchantable iron. It requires about one-sixth of its weight in flux, for which we use the Sibley limestone, found near the works. It also requires from 120 to 125 bushels of charcoal for a ton of manufactured iron. The charcoal we use is from a mixture of hard and soft wood, taken from adjacent timber lands of the company.

The sugar maple and yellow birch undoubtedly are the best timbers for coaling purposes.

The Eureka Company has let out its coaling by contract, at from 4½ to 5 cents per bushel, delivered at our works, the company furnishing the standing timber only, and have no difficulty in letting

out all the coal-making we wish at those prices. Our raw ore has cost us $8 per ton, delivered on the company's docks, from Lake Superior. Our furnace works, including stack, engine, blast apparatus, coal houses, etc., cost in even numbers $25,000. The stack has eight foot bosh and turns out eight tons per day, but is capable of making ten tons in twenty-four hours. All required motive or engine power is furnished from the escaped heat from the
344 furnace. It furnished employment for about fifteen men, independent of the coaling operations.

We have sold all the pig iron we could furnish at $40 per ton net of 2000 pounds, discounting 3 per cent. on cash sales. The iron we make is acknowledged to be the very best in the market, and will command the highest price for all purposes for which a superior iron is required.

The only drawback we find to a most profitable and satisfactory business is the high rates to us of the raw ore, which should be furnished at a reduction of 25 per cent. at least, to enable us to bring our manufactured iron into general use for ordinary purposes.

Respectfully, etc.,

GEO. R. GIVAN,
Gen'l Ag't Eureka Iron Co. and Wyandotte R. M. Co.

I concur in the above statements of Mr. Givan, and can bear testimony, from the result of severe tests in my private business, that the bar and pig iron manufactured from Lake Superior ore is the best to be had in this or any other market for all purposes where superior strength and tenacity are required.

E. B. WARD.

This concise and explicit letter, indorsed as it is by E. B. Ward, Esq., a capitalist well known for his business capacity, mechanical experience and successful enterprise, is esteemed as giving reliable data respecting the manufacture of the same ore contemplated for the Pioneer Company's furnace.

The cost of labor may be some 20 or 30 per cent. higher at Marquette than at Wyandotte; but it will be noticed that the raw material costs the Pioneer Iron Company but one-eighth as much as it does, at present prices, manufacturers on the lower lakes, while the cost of shipping the metal to a market is but little more, as
345 Chicago will doubtless be the best point of demand, and from want of timber no such manufactories will exist in that vicinity.

Financial prospects.

The first call of $5 per share having paid for the lands of the company, excepting that which remains on long time payment, viz: four instalments of $5,000 and interest annually during four successive years; the next two calls, due June 1st, for $2, and 1st of August, for $3, will provide for the erection of the furnace and ap-

pendages, and the directors calculate on having the same in readiness for use during the month of November next.

The third instalment of $5 per share, authorized by the stockholders, will not be called until November or December next, or such portion of it as may be necessary, and will be devoted to stock the concern during the ensuing winter with a year's supply of charcoal in advance, and also to sustain the regular operating of the company's furnace until the opening of navigation in 1858. From that time it is to be hoped that the avails of the product of the furnace will furnish ample means to prosecute the enterprise thereafter, and allow a dividend before the close of the season.

It may be well to add that it is intended to erect, the present season, a furnace of one "stack," capable of turning out from ten to twelve tons per day; but as soon as the business will warrant and facilities permit, it is expected to erect an additional stack, both to be driven by one engine, and by that means double the product at a less ratio of increase in expenses.

In conclusion, the directors would only say that the foregoing gives a synopsis of the facts and figures which led them as individuals to think favorably of the enterprise and become pecu-
346 niarily interested in it. It would be superfluous for them to attempt to estimate in advance the profits of the business.

The stockholders will be able, from the information contained in this circular, to decide in their own minds as to the merits of the project, and its prospects of becoming a "paying investment."

Respectfully submitted, etc.,

L. T. MERRILL, *Secretary.*

At a meeting of stockholders of Pioneer Iron Company held in New York, April 21st, 1857.

It was voted that the first assessment of $5 per share having been paid, the directors be authorized to levy two additional assessments on the capital stock of this company of $5 each, payable on the 1st of June and 1st of November next respectively; or at such other times and in such amounts as they may deem advisable, not exceeding the amount or averaging at an earlier date than above specified.

At a subsequent meeting of the directors it was

Resolved, That in lieu of the assessment as proposed by the stockholders, of five dollars per share, payable on the 1st of June next, and assessment of two dollars per share, payable on the 1st of June, and three dollars on the 1st of August next, be called for on the stock; and that those paying assessments in advance of the time due, shall be allowed interest; and those who do not pay promptly be charged interest to or from the date as the case may be, and that all payments be made in funds at par in New York city.

Resolved, That the president and secretary be a committee to prepare a circular from this board, to accompany the notice of the sec-

ond assessment, to state briefly the plans adopted in relation to the company's business, and facts connected therewith.

347 The following extract from the *Lake Superior Miner*, of Ontonagon, March 7, 1857, shows the qualities of the iron produced at Marquette in a very strong light, as compared with other kinds now generally used:

Lake Superior iron.

During the progress of the harbor improvement this winter the quality of the above iron has been subjected to a very severe test. It is well known that the tenacity of iron is very greatly impaired by cold, and that iron which is quite tough at ordinary temperatures becomes very brittle and snaps off with a crystalline fracture if it is too severely tested when the cold is intense. Hardly any use to which the metal is put requires tougher iron than the bands placed around the butts of piles to prevent their abrasion or splintering from the force of the hammer. When the log is driven to nearly its proper depth the hammer, weighing 3,200 pounds, drops upon it from a height of about 35 feet. Last winter the ordinary banding iron was used, and great difficulty was experienced from the breaking of bands. As many as three bands have been broken in getting down a single pile, and very few lasted when the weather was cold to put down more than three or four without breaking. They would sometimes break into two or more pieces and would fly in such a manner as to endanger the persons of the men about the machine. This winter they used the Lake Superior iron, with the most satisfactory results. They have driven in the very worst of weather, with the mercury 15 to 20 degrees below zero, AND YET HAVE BROKEN BUT TWO BANDS. As many as fifty piles have been driven by a single band, which received no other injury than being flattened and expanded.

The iron is soft and fibrous, extremely malleable, and is precisely fitted to all purposes requiring tensile strength. The

348 appearance of the fracture is different from other iron, not at all crystalline, but very white. The blacksmith remarked that he "never before saw iron that looked exactly like silver."

On the whole, we are inclined to think that is perhaps the best practical test of the comparative value of the differen- irons which has yet been made.

Mr. ELDREDGE:

Q. Will you explain the circumstances under which it was marked?

Mr. HOYT: I object to that.

COURT: Why didn't you have it attached?

A. I wished to use it with other witnesses in another place, and it was the only one of those left, and I feared to trust it to the regular and ordinary course of the mails.

E. N. BREITUNG, sworn on the part of complainants, testified as follows:

Direct examination by Mr. SHAULL:

I reside at Marquette, Michigan. My initials are E. N., Edward N. My father was Edward Breitung; my mother's name at present is Mary Kaufman; she married N. M. Kaufman after the death of my father. I don't remember the year, but about five years ago, four or five years ago. My father resided in Negaunee until he died. I have neither brothers nor sisters. My father died on the 3rd day of March, 1887. I had no brothers or sisters or the issue of any deceased brother or sister living at the time of my father's death. I had one brother who died when he was about 6 months old. At the time of my father's death I was the only child living and any children that died, died under age and in infancy. I was the only heir at law of Edward Breitung. My age is 29.

349 Q. You may state whether your father died intestate or left a will.

A. He left no will.

Mr. HAYDEN: That is objected to as incompetent.

Prior to my father's death I resided at Negaunee, Michigan. I had resided there all my life up to that time. I left Negaunee, I think, about 11 years ago.

I was somewhat familiar with my father's business at that time. I was familiar with the lands on sections 5, 6, 7 and 8, 47–26, in and about Negaunee. I passed over them quite frequently when a boy. I have been familiar with those lands it must — 18 or 19 years, or more probably.

Q. Whether or not you and your predecessors have had possession of the lands 15 years or more prior to the first of January, 1900?

Mr. HAYDEN: That is objected to as incompetent, improper and immaterial.

A. Certainly, for 15 years, I think, and a little more.

Q. What kind of possession have you had?

A. Open, notorious and exclusive.

Mr. HOYT: I move that that answer be stricken out.

I don't know of anybody else making any claim. I don't know of the Pioneer Iron Co. in any way interfering with my possession during that time up to about the 1st of January, 1900. They didn't make any claim as to any rights to these lands, to my knowledge, up to that time. They never did any mining, to my knowledge, on these lands up to that time.

The Pioneer furnace, so called, is situated, I should think, about a mile from where I lived in Negaunee. I am familiar with the furnace. As a boy I was quite familiar. I used to play around it

and go and watch the men put in the charcoal and the other things, iron, etc.

Q. Do you know who ran the furnace, or who was reputed to run it?

350 Mr. HOYT: That is objected to as improper, incompetent and immaterial.

A. The Iron Cliffs Co.

They have run it always as far as ever I knew. I remember the Milwaukee mine and the Davis mine, and I think there was some ore shipped from a good many different properties.

I recognize the paper you show me, dated the 1st of November, 1891, made by the Negaunee Iron Co. and others of one part and the Grand Rapids Iron Co. of the other part, signed Negaunee Iron Co. by Mary Kaufman, president, N. M. Kaufman, secretary, and the Grand Rapids Iron Co. by Lewis H. Whitney, president, and Jacob ——, secretary; and also signed by Mary Breitung, E. N. Breitung, Henry Hewitt, Jr., Ramsay & Jones by C. H. Jones, duly witnessed and acknowledged. I recognize most of the signatures upon it. It is a lease to the Grand Rapids Mining Co.

Q. Of the property known as what?

Mr. HAYDEN: I object to what is in this lease, inasmuch as it is not offered in evidence; the lease is the best evidence.

Mr. SHAULL: Leaving off the two assignments that appear upon the printed portion thereof, I offer the lease in evidence. The assignments I do not care to offer.

Mr. HAYDEN: The lease is objected to because it is self-serving evidence, if it is evidence at all, and is incompetent and irrelevant.

Mr. HOYT: It is a statement of the party in his own interest.

(Paper marked Exhibit X.)

"This lease covers the S. W. ¼ of N. W. ¼ and the N. W. ¼ of S. W. ¼ of sec. 7, tp. 47, no. R. 26 W. at Negaunee and authorizes
351 the working of mines on said lands for a period of 18 years from Dec. 1, 1891, and reserves a royalty on all ores mined, and contains the following clause: 'Said Negaunee Iron Company, Henry Hewitt, Mary Breitung and Edward Breitung each for itself and himself warrants title to said lands to the extent of their respective interests only and not for each other. And said lease contains no reference to the Pioneer Iron Company or any lease or incumbrance of any kind upon said lands, and makes no reservation in favor of the Pioneer Iron Company nor any reference to any instrument making any reservation in favor of the Pioneer Iron Company,' and was never recorded.

Judge BROWN: Was the lease ever recorded?

Mr. SHAULL: I think it was never recorded.

Mr. HAYDEN: I would like to have that appear.

Mr. SHAULL:

Q. I ask you whether the Grand Rapids Co. went into possession and operated under that lease?

A. They did.

They continued to operate under that lease for a number of years. They shipped ore under that lease and paid royalty.

I recognize the paper which you show me, a lease dated November 1, 1893, between the Negaunee Iron Co., Edward N. Breitung, Charlotte G. Breitung and Mary Kaufman of one part and the Davis Mining Co. of the other part, covering the S. W. ¼ of the N. W. ¼ of section 7, 47–26, in the county of Marquette, State of Michigan, signed by the Negaunee Iron Co. by Mary Kaufman, president, N. M. Kaufman, secretary; also by Mary Kaufman, Charlotte G. Breitung, Edward N. Breitung and the Davis Mining Co., by James H. Rough, president, and F. E. Nightingale, secretary, and duly witnessed and in the presence of F. E. Pearce and others. I recognize most of the signatures. It is a lease from the Negaunee Iron Co. and
352 others to the Davis Mining Co. I recognize the signatures of all the parties to the instrument.

I think the Davis Mining Co. operated under that lease. I think they had possession under it for several years. They did take possession and operate under it. I wouldn't be certain whether they paid rent, but the books would show that.

Mr. SHAULL: I offer the paper in evidence.

Mr. HAYDEN: It is objected to on the ground that it is self-serving evidence and incompetent and irrelevant, and it does not appear to have been recorded.

(Paper marked Exhibit Y.)

"This lease authorizes the Davis Mining Company to mine, dig and carry away the iron ore that may exist on the land therein described for the term of 20 years from its date. It reserves a royalty for ore mined, and states that the Davis Mining Company has already explored said lands, and that it represents that iron ore exists therein and contains the following clause: 'The said Negaunee Iron Company, Edward N. Breitung and Mary Kaufman each for itself and himself warrants title to said lands to the extent of their respective interests only, and not for each other.' It does not in any way refer to the 99 year lease nor does it contain any reservation or references to other instruments showing any reservation in favor of the Pioneer Iron Company or any other corporation or persons whomsoever," but was never recorded.

I have an interest in the Arctic Iron Co. I think I own about ¼ of the stock, and I am also a director. The other owners of the stock are the Cleveland Cliffs Iron Co. It owns about half. Mary Kaufman and N. M. Kaufman own about ¼ and I own another ¼. Mary Kaufman is president and Wm. G. Mather is secretary and treasurer of the company.

353 This is the Arctic Iron Co. whose lands appear upon some of the maps that have been introduced in evidence. They own lands in or near Negaunee.

Q. Has Mr. Mather or anybody else made application to you for a lease upon certain lands or upon some lands in or near Negaunee?

Mr. HAYDEN: I object to that as immaterial and irrelevant.

A. He did make application for leases on several lands in and near Negaunee.

Mr. Hayden acting for him also made application. Some applications were made about a year and a half ago, and some about two years ago.

Q. I will ask you whether those applications were made after or before this entry upon your lands there in 6, 7 and 8 by parties claiming to represent the Pioneer Iron Co.?

Mr. HAYDEN: That question is objected to as incompetent and immaterial.

A. Before that time.

I should think some were made half a year before and some a year before. They applied for leases, Mr. Mather applied for some and Mr. Hayden applied for some. They applied for some on what is known as the New York Hematite on section 6, and some, I think on what is known as the Tracey, and also on what is known as the Harvey lots. They also applied for one over near Teal lake, just east of Teal lake on this map on section 31.

Q. What part of those leases applied for was on Arctic land?

A. The Arctic Iron Co. own an interest in the Harvey lots. Those three lots or forties over near Teal lake. The other two were on lands belonging to the same owners that they belong to now,
354 the Negaunee Iron Co. and others. I told them that we would give them the leases. They said they would be willing to pay about the same royalty as what is known as the Regent mine is paying.

Q. What was said, if anything, during those negotiations as to what should happen to the Arctic Iron Co.'s land by way of giving options or leases to others, in case they wouldn't take the leases upon the royalties that you were willing to accept as an officer of the Arctic Iron Company?

Mr. HOYT: That question is objected to as incompetent and immaterial and improper.

A. Why, I told them that it was too low a royalty under the condition of iron as it was now, and we would have to have a larger royalty, and they would have to mine some reasonable minimum, but I told them we were willing to give them the leases provided they would agree if they didn't take the leases—that is they would have the first offer, but if they wouldn't take them, they should

throw them open to any responsible people who would take them. They refused to do that.

The application for these leases was renewed from time to time by them. As a result they were told that when they were willing to say that they would take the leases on the same terms that other people would give for them, they should have the first chance. They refused it. In regard to the leases on the Negaunee Iron Company lands and lands belonging to the other owners on section 6, the same thing happened as on the others.

Q. How long before the entry of these people was that? How long before the trespass that these negotiations were finally broken off?

Mr. HOYT: That is objected to as improper.

A. I should say about six months.

355 During the course of these negotiations neither Mr. Mather nor Mr. Hayden ever made any claim about the Pioneer Iron Company having any rights in these lands over on section 6. They never made any claim that the Pioneer Iron Company had any rights under the old 99 year lease on the Arctic Iron Company lands and in section 31, on the Harvey lots, which they were trying to get a lease of.

They sent a number of forms of leases on different properties that they would be willing to accept. I recognize paper you show me, an option or lease. It is a form for an option and lease sent me by the Cleveland people, asking if it would be acceptable to me.

Q. How do you mean?

Mr. HAYDEN: I object to that unless the papers are brought into court.

A. They refused to tell me who they sent it for.

Q. Who sent it to you?

A. Some were sent by Mr. Hayden and some by Mr. Mather.

Mr. HOYT: That is objected to as incompetent and immaterial.

A. They refused to disclose who they wanted it for.

Mr. SHAULL: I now offer the paper in evidence, and ask to have it marked as an exhibit.

Mr. HOYT: Same objection.

(Paper marked Exhibit Z.)

"Said Exhibit Z is a blank option with a form of lease attached thereto, said option covering the west fractional half of the southwest quarter of sec. 31, tp. 48 N. R. 26 W. in Negaunee. Said blank form of lease so attached is a printed form for the use of the Pioneer and Arctic Iron Companies and originally read:

"This indenture, made this — day of —— in the year of our Lord one thousand eight hundred and —, between the

356 Arctic Iron Company and the Pioneer Iron Company, two corporations," and there are erasures and interlineations in said lines so that the words remaining read as follows:

"This indenture, made this — day of —— in the year of our Lord one thousand eight hundred and —, between the Arctic Iron Company, a corporation."

Further on in said instrument where the lessee agrees to pay on demand to "each of," "each of" are stricken out by a pen.

Further on in said lease is stricken out the words "one-half of the ground rent and royalty shall be paid by said party of the second part to the Arctic Iron Company and one-half to said Pioneer Iron Company to be paid at such places and to such persons or corporations as may be designated by each of said parties of the first part from time to time."

Further on in said instrument where the lessee is required to furnish a written report to the Arctic Iron Company "and a duplicate thereof to the Pioneer Iron Company aforesaid," the words quoted are stricken out with a pen.

Said blank instrument in no way limits the use to which the lessee shall put the iron ore mined by it under the instrument.

Indorsed on the outside of the instrument as lessors appear the words "Arctic Iron Company and Pioneer Iron Company." "Pioneer Iron Company" had been stricken out with a pen.

There also appears on outside the following indorsement in pencil: "Sec. 31."

Mr. SHAULL:

Q. I call your attention to the "section 31" appearing upon the outside of that paper, and ask you if that were there when you received it?

A. Yes, sir.

357 Mr. HAYDEN: That is objected to as immaterial and incompetent.

I was present at the taking of the deposition of N. M. Kaufman in Chicago before Rule W. Bridge, a notary, on the 11th of March, 1901, at the Chamber of Commerce bldg. I saw that paper offered for identification at that time and marked. It was marked "R. W. B." That is the paper testified to by Mr. Kaufman in that deposition.

Mr. HOYT: We object to all testimony relating to the deposition of Mr. Kaufman, because it was taken on insufficient notice, and we had no opportunity of cross-examination.

I remember a meeting of the board of directors of the Arctic Iron Co. held sometime early in August, 1899, at the residence of N. M. Kaufman in Marquette, Michigan. I think there were present N. M. Kaufman, George Hayden and yourself and myself and I think Wm. G. Mather, and Mary Kaufman part of the time.

Q. What, if anything, was said about those leases that you have just testified to which Mr. Mather and Mr. Heyden wanted?

A. Yes, it was brought up there.

Q. Whether or not the subject was pretty fully discussed?

A. It was fully discussed.

Mr. HOYT: The same objection is continued to this testimony.

I asked them about the leases, if they wouldn't agree that in the event that they wouldn't accept them, they would throw them open to any responsible people who would take them, on the ground that I didn't want the property tied up. They were representing the Arctic Iron Company at this meeting, being the other two directors.

358 Q. Whether or not you took the ground that it would be disadvantageous to the interests of the Arctic Iron Company to give leases for less royalty than had ought to be given?

Mr. HOYT: I object to that question as incompetent and improper and irrelevant?

A. I did. If the Arctic Iron Company could get a better royalty from other parties, it was our duty as directors of the company to get it for them.

They refused to give the leases to anybody unless they got them. (Same objection.) I think the Arctic Iron Company own a half interest of these lands. I never heard of the Pioneer Iron Company doing any business.

Mr. HOYT: The same objection is continued.

I never heard of its doing anything.

Q. What have you heard about it, if anything?

A. I heard that it was the Iron Cliffs Company doing the great portion of its business.

Mr. HOYT: The same objection.

A. In the name of the Pioneer.

Mr. HOYT: The same objection. I move that the answer be stricken out, on the ground that it is clearly irrelevant.

Q. Do you know, or have you heard whether the Pioneer Iron Company stock is owned by the Iron Cliffs Company?

Mr. HOYT: That is objected to as improper and leading, and incompetent and immaterial.

A. I know the Pioneer Iron Company stock belongs to the Iron Cliffs Company.

I have known that for a good many years. I have known it from Mr. Hewitt of New York.

Mr. HOYT: I move that that answer be stricken out.

Mr. SHAULL:

359 Q. How did you know it from Mr. Hewitt?

A. Because he voted it for them, and he was a trustee for the money that was loaned the Iron Cliffs Company.

Mr. HOYT: I move that that answer be stricken out as incompetent.

I refer to Abram S. Hewitt. I purchased some land from Hewitt and Ramsey and Jones at one time, over on section- 6, 7 and 8. That was sometime in December, 1893. I had a lawyer look up the title for me. He looked it up and advised me that I had a clear title.

Q. Whether or not he said anything about the Pioneer Iron Company or its old 99 year lease?

Mr. HOYT: That is objected to as incompetent and improper and I move that the answer be stricken out.

A. The opinion of it was that the Pioneer Iron Company was dead.

I didn't buy until after the examination. I relied upon that advice in purchasing.

Mr. HOYT: The same objection continued and I move that the answer be stricken out.

I paid about $43,000 for the land.

Mr. HOYT: The same objection continued.

I agreed with Mary Kaufman that she could have a half interest at the same price I purchased that. (Same objection.) We consulted together continually in regard to the purchase. (Same objection.) The same advice was given to us jointly. (Same objection.) She understood it as I did and relied upon the same advice.

Mr. HOYT: I move that the answer as to what she did be stricken out.

I am not very familiar with the office of the Iron Cliffs at Negaunee, only fairly so. I have been fairly familiar with it for a good many years.

Q. Whether there was any indication of the Pioneer Iron Company from any signs or anything of that kind?

360 Mr. HOYT: That is objected to as incompetent and immaterial.

A. I never saw any sign that there was a Pioneer Iron Company. They have no sign there now that I know of. They have a sign on the door "Cleveland Cliffs Company and Iron Cliffs Company." I couldn't say how long the Cleveland Cliffs Company sign has been on the door, but for a few years. I couldn't say how long the other has been on the door, but I think quite a few years.

Cross-examination by Mr. HAYDEN:

I couldn't say when I first saw this sign, might be 2 or 3 years and it might be 5. Passing in and out I couldn't help but see it.

I never made any examination about the building to discover any other signs.

Mr. Healey, Mr. Eldredge and Mr. Shaull were lawyers who advised me that the Pioneer Iron Company was dead. Mr. Healey advised me that the Pioneer Iron Company was dead some years ago, I think about 1889. He was my attorney at that time. I don't know that he was attorney for the Breitung estate at that time, I think he was. He had been such attorney for a good many years. I couldn't say how many. He was attorney before my father's death also. I don't know whether he was attorney for the Breitung estate from the time my father died.

Q. He was attorney at this time for the Breitung estate, in 1889, as you say?

A. Yes, I knew he did that business because of the——

Q. Never mind, I only speak of the act of 1889 that Mr. Healy had to do with now. Did Mr. Healy give you a written opinion?

A. I don't know.

361 I cannot say how long after that time he continued attorney for the Breitung estate. I don't know whether he was attorney for the Breitung estate down to 1899. I might have consulted with him, I don't remember.

Q. Do you never talk with the attorney yourself?

A. At some time, yes.

Q. If he was attorney for the estate, didn't you talk with him?

A. Very seldom.

I happened to talk with him on this particular occasion, because it was an important matter, I had some interest in it. I didn't have any other important matters with my attorney just at that time. I might have had during the years 1887 to 1899, other important matters to consult an attorney about. I think Mr. Healey was also attorney for my father for a number of years. He may have been for 10 years at least or more before my father's death.

I can't remember when it was that Mr. Shaull advised me that the Pioneer Iron Company was dead, but it was sometime ago. I can't remember how many years ago. Mr. Eldredge advised me of that fact some years ago, too, I couldn't tell how many years. I don't know whether I had three attorneys or not for the Breitung estate at the same time. Whoever happened to be manager of the Breitung estate at that time did know. There wasn't any manager in 1899. The manager from 1887 to about 1891 or 1892 was N. M. Kaufman. After N. M. Kaufman's management there wasn't any Breitung estate; the estate was settled or divided in 1891 or 1892. I became of age in 1891 or 1892, I don't remember which. N. M. Kaufman represented Mary Kaufman's interest most of the time from that time on.

362 That part of the advice about the Pioneer Iron Company being dead was given to myself and my mother jointly about 1889 and before that. I think Mr. Healy and others gave that advice. I cannot remember who the others were. I don't re-

member whether he gave it to me in writing at that time. I have no recollection on the subject at all. I know Mr. Healy's handwriting. I think I would know his signature.

Q. Is that his signature (paper shown witness)?

A. I think it is.

Mr. HAYDEN: I would like to have the paper marked for identification. (Paper marked for identification and appears as Defendant's Exhibit 24.)

Mr. Healy was a part owner of the Arctic Iron Company for a number of years. I don't remember down to what time, but he sold out to Mr. Mather for the Cleveland Cliffs Iron Company, a year ago or 2 or 3.

Q. About March or April, 1899, wasn't it?

A. I couldn't say.

Q. Was it about that time?

A. I couldn't say.

Q. You have no recollection whatever on the subject?

A. No.

Q. Has anything occurred within the last few minutes to make you forgetful?

A. Nothing.

Q. You remembered of wandering over these Negaunee lands while the Milwaukee mine was in operation, and remembered about it and all of that, can't you remember for two or three years?

A. It wasn't my business to know when he sold out, I didn't pay much attention to it.

Q. Were you not at the same time trying to buy his interest?

A. I was trying to see that he got more money for it. I told him he didn't get enough.

363 Q. You were interested in it, when was it you told him that?

A. Some years ago, I don't remember when.

Q. You had an option on his stock for a while?

A. Yes.

Q. When was that?

A. Some years ago.

Q. Can you remember when?

A. No.

Q. How long before August, 1899, did Mr. Mather acquire Mr. Healey's interest?

A. I told you I can't remember, I didn't pay much attention except that I tried to get Mr. Healey a better price.

Q. I am asking about the time Mr. Mather acquired the interest with reference to this meeting in August, 1899, held at Mr. Kaufman's house at which you were present?

A. I don't know, I think the records will show, stock-books.

Q. You were present at that meeting which was the first meeting after Mr. Mather acquired his interest in the Arctic Iron Company?

A. I am not certain whether it was or not.
Q. Don't you know it was?
A. No, I don't know it was.
Q. Don't you know it was in the spring of 1899 you were trying to buy Mr. Healey's interest and Mr. Mather finally got it?
A. I wasn't trying to buy it.
Q. Didn't you have an option on it?
A. Yes, but I was trying to get him a better price for it.
Q. Didn't you complain to Mr. Healey that he ought to have sold it to you instead of to Mr. Mather?
364 A. I told Mr. Healy if he was going to sell it for the price he did, if he was going to give it away, he ought to have given me a chance, and we would have offered him a price for it.
Q. You don't remember when it was?
A. No, sir, I don't know.
Q. Not within 8 or 10 years?
A. Oh, yes, within 8 or 10 years.

Down to 1899 Mr. Healy and his wife were directors of the Arctic Iron Company, directors of its organization. Mr. Healy owned one-half of the Arctic and the Breitung estate the other half. The company was organized by Edward Breitung, my father and Mr. Healy. I wouldn't say that that is the way I know it, that is the way I understand it. Whatever Mr. Mather had to do with it was only after he bought the stock from Mr. Healy. Mr. Mather and yourself were two of the directors of the Arctic Iron Company, the last time I knew anything about it. I think that election happened sometime in 1899, but I would not be certain. Mary Kaufman and myself were the other two directors. The directors of the Arctic Iron Company represented it from the time of its organization down to the time when Mr. Healy sold the stock to Mr. Mather. I don't know that before that they were always members of my family. I think Mrs. Kaufman has been president of the company ever since my father's death.

I bought this Ramsay and Jones interest for $43,000 sometime in December, 1893. I couldn't tell whether I got a quit-claim deed or not. I think I got a warranty deed.

I think the first time Mr. Mather and yourself applied to me for a lease on section 31, among other things of the Arctic lands, also the Tracey property, was about 2 years ago, and the other
365 about a year and a half ago. I think the first was before the year 1899. I think some of it was before Mr. Mather had bought the stock in the Arctic Iron Company, a half interest. He and I talked it over on some of these lands in his cottage at Ishpeming. He wanted to know if I wouldn't join him in some sort of operation, and if he couldn't get some leases on some of these lands. The Cleveland Iron Mining Company and the Iron Cliffs Company, represented by Mr. Mather, are large shippers of iron ore. He didn't say what he wanted it for, but when I afterwards asked him who he wanted it for, he refused to tell. I don't know how

much ore the Cleveland Cliffs Company and the Iron Cliffs Company and the Cleveland Iron Mining Company ship from the county of Marquette alone, nor where they ship the ore. I know where ore usually goes shipped from this country. I don't know where their ore goes. I don't know anything about their ores at all. I very seldom saw any statements of shipment or studied them. Several times before I became of age I took part in the business of the Breitung estate when there was anything of importance. I conducted the negotiations for the purchase of this Ramsay and Jones interest myself. I think it might have been a month or so before I purchased that I began the negotiation, or it might have been longer, in the neighborhood of a month or a few weeks.

The Negaunee Iron Company is a Michigan corporation. I am a stockholder and there are some other stockholders. I don't know who the other stockholders are, but I think they are Mary Kaufman and N. M. Kaufman. I am a director of the Negaunee Iron Company, I am not an officer. I don't know that Mary Kaufman is president. I don't know that N. M. Kaufman is president. The company very seldom have any elections. The Negaunee Iron
Company is a party to this suit. I don't know who brought
366 it into court. I didn't have anything to do with making it
a party that I know of. I might have taken part in settling whether it should be made a party to this suit. My impression would be that I knew it was going to be a party and I didn't object to it. I think that the stockholders are Mary Kaufman, N. M. Kaufman and myself, I don't know it. I don't know of any other stockholders except these three. Part of the stock of the Negaunee Iron Company I inherited and part of it I purchased from different people, Maas, Lonstorf and others, I couldn't say. The books would show.

I couldn't say that Maas and Lonstorf organized the company; I don't know when it was organized. I don't know whether or not during the time that Mr. Healey represented that company and represented my father's interest in the company, he also represented all my father's interests in whatever company he was connected with. Mr. Healey was attorney in some of the matters for the Breitung estate and they had other attorneys in other matters. I cannot tell just now what other attorneys they did have, I know there were others.

The Breitung estate was divided sometime in 1891 or 1892 and I took my own interests. After that I had a number of different lawyers. There might be a dozen at different places. In Marquette county, there has been Mr. Eldredge, Mr. Shaull, Mr. Brown, and sometimes there might have been other gentlemen associated with them as counsel. I cannot remember how far back Mr. Eldredge and Mr. Shaull have been employed to represent my interests. Most of the time since the separation of the estate, N. M. Kaufman has represented my mother's interests.

I have never seen the articles of association of the Negaunee Iron

Company. Part of the stock was purchased by different peo-
367 ple and part by me. I don't know from whom I bought it, because most of the stock was not bought by me personally. The stock that was bought by me was bought from Mr. Travis. I suppose he must have owned it, I think he was principal.

I don't know whether or not any report was ever filed by the Negaunee Iron Company. I never paid any attention to it at all. I presume this business of the Negaunee Iron Company has been entrusted to the proper officer. I don't know who is the proper officer. There are no other officers that I know of besides Mary Kaufman and N. M. Kaufman. There may be others. The business of the company has not been entrusted entirely to Mary Kaufman and N. M. Kaufman. I have done some business for them. I have looked up lands and saw in what shape the lands were and tenants and so on, and I might have done other things that I cannot just now remember. This business testified to by Mr. Edgerton was not entirely a part of my business. I have done a good many things in Negaunee that I couldn't remember just now at different times. I think I looked up titles myself before I purchased the stock, that is I didn't do it personally, but had it done by counsel. I couldn't remember when I purchased this stock. I couldn't tell when the titles conferred on the Negaunee Iron Company were bought from me. I don't know that my father was a stockholder of the Negaunee Iron Company before he died, but I think he was. I know of the Negaunee Iron Company doing business in this county; the business that they were organized for. They have given leases and done numerous other things. I cannot specify any of the other things. I am not guessing that they did other things,
but I have been told so. All I know is what my counsel
368 told me, if that is hearsay. They might have carried on business of mining iron ore. I have heard that in the early days they did. Since my connection with it they have not done so, that I know of, although they may have done so. They never engaged in smelting iron ore or copper or any other mineral that I know of. I know that my father once ran a furnace at Negaunee and we have got some of his old papers, I think. I don't know whether he did it as the Negaunee Iron Company or himself. We might have the papers among his old papers in the vault. I will produce them if we can find them.

Mr. HAYDEN: Unless the papers are produced, I move to strike out the answer as not responsive.

I know he ran a furnace at Negaunee once. I don't know whether the Negaunee Iron Company did it or he did it. Besides giving leases the Negaunee Iron Company collected rents under the leases and lots of other things, and I think they did some drilling at one time under me. I don't know when they did it, I think Captain Foley did it for me. I know the drilling was done. I hired Captain Foley to do some drilling about the time I bought out Hewitt and

Ramsay and Jones. That drilling was done on the Baraga. I didn't go there, I was in Europe at the time Captain Foley did the drilling. I couldn't say how long I remained in Europe. I know he sent a core to one of the hotels in London to me. The core or the letter he wrote may be in the office some place. I will bring it here if I can find it.

Mr. HAYDEN: I move to strike out the answer unless it is produced.

As to results of the drilling, I have had a great many cores at different times, some running as high as 67 per cent. in iron and low in phosphorus and some ran much lower. Mr. Foley was paid for this, I paid him.

I suppose the receipts are in the office.

369 You were not present the first time Mr. Mather applied to me for a lease. Mr. Mather asked me to come to Ishpeming and meet him up there at his cottage. He wanted to see me. I can't tell the date, but it was 2 or 3 years ago, I think. I can't remember the date when the Oliver Mining Company was given a lease by the Pioneer Iron and Arctic jointly. Before that was done, I promised to give Mr. Mather or one of his companies that he chose to take it to, or to himself personally, a lease on the remaining lands owned by the Arctic Iron Company, provided he would make reasonable terms. I didn't promise to give Mr. Mather the lease without making any terms whatever, but the lease had to be on reasonable terms. I did promise in the presence of Mr. Eldredge, Mr. N. M. Kaufman and yourself that I would give Mr. Mather or any of his companies a lease on any of those Arctic lands, provided he would take a reasonable lease. I didn't, without naming any condition.

After the Oliver lease was given, Mr. Mather asked me to comply with the promise. He didn't say that if I didn't comply with the promise I had made to him I couldn't have it for anybody else. He also stated he would do what he could to tie up our lands up there.

Q. Will you answer the question directly, whether Mr. Mather did not say to you that having made him a promise to give him a lease without naming any conditions at all at the time and you having gone back on it entirely, unless you would comply with the promise he would not consent to join you in a lease to anybody else?

A. Why, he said a good many things.

Q. Did he say that?

A. I don't remember whether he said that or not. I know he said a great many things at different times.

Q. This form of lease you have said was sent you. Have you the correspondence accompanying that?

370 A. I think I have. I think that is in the office.

Mr. ELDREDGE: Mr. Breitung didn't say it was sent to him.

Mr. HAYDEN: He did.

A. It might have been handed to me by Mr. Mather or by Mr. Hayden, I can't say.

Q. What is your recollection as to how you got this now?

A. I don't know how I got it.

Q. You don't know how you got it?

A. No.

Mr. HAYDEN: I move to strike out all the evidence in regard to the form altogether.

Q. This form of lease represented your idea of what Mr. Mather wanted?

A. He said he would be satisfied with it.

I can't tell how much royalty the Regent was paying. I know it is a rather low royalty, too low for times of this kind. I can't remember when the Regent lease was made. I think it was rather a low royalty even at that time. I signed the lease. I didn't sign it unwillingly. I didn't think the terms were proper when I signed it. I signed it because the whole thing was in a tangle with Corrigan McKinney and other- and I was willing to sacrifice a little to get the mine working. It was a developed mine. These lands that Mr. Mather wanted were not developed that I know of. There has been some drilling on some of them, and I think a shaft on some of them.

Q. The promise to Mr. Mather was made at the same time the Oliver lease was granted, wasn't it?

A. On part of these and part of the other lands. I told him he could get a lease on the others before that.

Q. Before that?

A. Before that on some of the lands.

371 Q. You had some talk in the presence of Mr. Eldredge and Mr. Kaufman and myself about giving a lease, and that was done before the Oliver lease was signed, wasn't it?

A. I couldn't say.

Q. You had some talk in the presence of Mr. Eldredge, Mr. Kaufman and myself?

A. I had. If there has been one, there has been twenty talks about this lease, I couldn't remember them all.

Q. Did you, on the cars leaving Marquette on your trip to Cleveland for the purpose of executing the Oliver lease, and before it had been executed by Mr. Mather, one of the officers of the Arctic Iron Company, have a talk with Mr. Eldredge, Mr. Kaufman and myself about giving a lease to Mr. Mather?

A. I have had a great many talks about giving a lease to him.

Q. Did you have one on that particular occasion?

A. I cannot say whether I did or not, I don't remember. There were a great many of them.

Q. There were a great many of them?

A. I remember the substance of the talk, putting them all together, about what they mean, and that is all I remember about them.

Q. You have formed your meaning from all the talks, but you can't relate any one talk?

A. No, I might some of them, where the argument got heated, and it was impressed upon my mind, I can remember some of those, but ordinarily it went in one ear and out of the other.

I learned that Abram Hewitt held the stock of the Iron Cliffs Co. from his acts as trustee. I don't remember whether or not I ever saw the power of attorney appointing him trustee. I never
372 asked him for it, that I know of. I have seen several papers giving him different powers. I have seen them at different places. One, I can remember most distinctly, is where he voted the stock. I think it was voted for him at Negaunee. I don't know what he voted for. I can't remember who voted it for him, I don't know when it was either.

Mr. HAYDEN: We offer in evidence this paper identified by the witness, signed by Mr. Healy, dated Chicago, Feb. 27, 1900, an opinion by Mr. Healy.

Mr. ELDREDGE: It is objected to as incompetent and immaterial.

Paper marked Defendants' Exhibit 24 and is as follows:

In the Matter of the 99 Year Lease Executed by Charles T. Harvey to the Pioneer Iron Company September 17th, 1857.

Brief of W. P. Healy on the construction to be given said lease.

General Statement of Facts.

February 26th, 1857, James L. Reynolds and wife conveyed, by warranty deed, to Charles T. Harvey, his heirs and assigns forever, 4,163 acres of mineral and timber land in and around Negaunee, then called Teal Lake, for $30,000.00, or about $7.21 per acre. Said deed contained the following c-ause: "Subject, however, to the conditions and agreements of a certain contract marked A hereto appended, between the parties hereto, concerning the undiscovered minerals on said lands."

The following is a copy of said contract A:

This memorandum of agreement, made this 26th day of February, by and between James L. Reynolds of Chicago, State of Illinois, of the first part, and Charles T. Harvey of Marquette county, State of Michigan, of the second part; witnesseth, that the party of the first part has this day conveyed by warranty deed (to which this contract is attached) to the party of the second part certain lands therein described, amounting to four thousand one hundred
373 and sixty-two 46-100 acres, for the consideration of the sum therein named, and also in the further consideration of reserving to himself an undivided half interest in and to all the minerals which have been or may be discovered on the premises referred to as conveyed, together with the right of having or acquir-

ing so much of the surface privileges as may be necessary to mine or develop the same by paying one-half of the equitable or appraised valuation per acre for the surface thus used or acquired, provided not more than twelve dollars per acre shall be adjudged to be the value of unimproved lands taken for such mining purposes, besides which, however, full compensation shall be paid to the party of the second part or his assigns for damages which may, by such mining or occupancy, ensue to the business connected with, or improvements placed upon such land by the party of the second part or his assigns.

Such payment to be made by the party of the first part on an equitable agreed value, or upon an appraised valuation made by disinterested referees, one designated by each party hereto, and they choosing a third, and the decision of the three thus chosen to be final, and when such payment is made he of the first part shall be entitled to enter upon and occupy any portion of said lands for mining purposes as aforesaid solely, provided, and it is agreed, however, that the party of the second part or his assigns shall have the sole right, free of cost or compensation to the party of the first part, to mine for their own use or for manufacturing purposes within the present limits of Marquette county, any mineral ores or marble found on any of the premises herein referred to, but shall have no right to sell to other parties for exportation as aforesaid without accounting to the party of the first part for his joint half interest therein.

In witness whereof, the parties hereto have set their hands and seals the day and year first above written.

CHARLES T. HARVEY. [SEAL.]
JAS. L. REYNOLDS. [SEAL.]

374 The Pioneer Iron Company was organized April 2nd, 1857, under the mining and manufacturing act of Michigan with a capital of $125,000.00, divided into 5,000 shares of the par value of $25 each. Harvey was one of the incorporators. He owned 1,668 shares and was manager of the company at Negaunee. The company was organized "for the purpose of procuring a suitable location for a manufactory and lands to furnish coaling facilities therefor in the upper peninsular of the State of Michigan and working the same for the production of merchantable iron, and such other use of their lands as the company may hereafter determine and adopt."

April 22d, 1857, Harvey conveyed to the Pioneer Iron Co. 3,488 out of the 4,162 acres bought by him from Reynolds the preceding February for $25,000 or about $7.17 per acre. This deed contains the following clause: "All of which is sold subject to the reservation of minerals and conditions of using and developing and sale of the same on said land as specified in the deed of the premises, James L. Reynolds and wife to the party of the first part. But all the interest thereby acquired by the party of the first part to one

undivided half of the minerals exported, and the privilege of manufacturing, free of cost, ores which may be mined on the said lands, is hereby assigned as fully as can be done by the said party of the first part to the party of the second part hereto."

The deed runs to the said "parties of the second part, their HEIRS and assigns, in CORPORATE SUCCESSION."

Harvey was then a married man but his wife did not join in the deed.

I do not know whether she is still alive or not.

The 4,162 acres, so purchased by Harvey from Reynolds at $7.21 per acre, extended about six miles east of Negaunee and were about from one-half to one and one-half miles wide. The 674 acres that Harvey did not convey to the Pioneer Iron Co. were in and around Negaunee and were much more valuable than the bulk of the 3,488 acres which he did convey and contain all the mineral subsequently discovered.

375 No mineral has yet been discovered on the 3,488 acres, except the small mine on the Buffalo which is now exhausted.

All these lands are now entirely stripped of timber. They are barren and for the most part wild and unfenced, and the surface is not worth as much now as in 1857.

At that time the timber was valuable for charcoal. Now the lands have but little value except for the mineral that they may contain. So that Harvey, in purchasing 4,162 acres from Reynolds, at $7.21 per acre, and selling 3,488 acres of the same lands to the Pioneer Iron Co. at $7.17 per acre, really got much the best of the bargain, although he was at the time sole manager of the Pioneer Iron Co. in the upper peninsula.

On the same day that he executed the foregoing deed Harvey also executed an agreement to the Pioneer Iron Co. for the consideration of $1 which is substantially like the 99-year lease, except that it was in perpetuity. It was never recorded. During 1857, Harvey, as manager of the Pioneer Iron Co., was engaged in erecting the Pioneer furnaces at Negaunee.

September 17th, 1857, Harvey executed to the Pioneer Iron Company the instrument now in question, called the 99 year lease, for the consideration of $1. It was duly acknowledged and was recorded in the registry of deeds of Marquette on the next day, September 18th, 1857. The following is a copy of the 99-year lease:

Memorandum of a Lease and Grant.

Made this 17th day of September, A. D. 1857, between Charles T. Harvey of Marquette county, Michigan, of the first part, and the Pioneer Iron Company of said county, of the *first* part; witnesseth, that the said party of the first part for and in consideration of the sum of one dollar to him in hand paid by the party of the second part,

the right whereof is hereby conferred and acknowledged, has conveyed, assigned, and set over, and does hereby convey, assign and set over to the party of the second part certain rights and easements
376 hereinafter described (subject to the provisions and limitations thereto annexed) in and upon certain pieces or parcels of land know- and described as follows, to-wit: The southwest ¼ of the southeast ¼ and the southwest ¼ of section number five, the southeast ¼ and the east ½ of the southwest quarter of section number six. The north ½ of the northeast ¼ and the northeast ¼ of the northwest ¼ of section number seven, and the northwest ¼ of the northwest ¼ of section number eight, all in township No. 47, north of range No. 26 west, containing 580 acres. Also the west ½ of the southwest ¼ of section number 31, town 48, north of range 26 west, containing 66 39-100 acres, which are also in the county and State aforesaid. The right and easements of aforesaid being:

1st. The right to cut and remove all the timber and wood standing or otherwise being on said lands, for the purpose of converting the same into charcoal or such other uses as may be desirable in the prosecution of business by the party of the second part. Such wood and timber to be removed from said lands within five years from the date hereof at such times within that period as the party of the second part may elect, in the following order however, viz: After clearing its own lands on section six, T. 47 N. R. 26 W. the party of the second part shall next remove the timber and wood from the lands in that section herein described until it is all removed. Then it shall remove that on land in section seven herein described, then that on section eight in like manner, then that on section five, first clearing that on its own lands in the same and lastly that on section thirty-one, T. 48 N. R. 26 W. This last stipulation, however, to be subject to future agreements between the parties hereto.

2nd. The party of the first part does hereby let, lease, and demise, to the party of the second part for the consideration hereinbefore mentioned and for the full end and term of 99 years from and after the date hereof all the lands hereinbefore mentioned and all
377 other lands now owned by the party of the first part in either of the townships above mentioned, for the sole purpose of mining and quarrying at its own expense such ores and marble as may be found thereon, and subject to the provisions hereinafter mentioned, viz:

Provided it shall not quarry, mine, or remove any ores on said lands except such as it shall actually convert into merchantable iron in its own furnaces or forges, and provided further, it shall not in such mining or quarrying operations, use or impair any of the improvements, which may be placed upon said lands by other persons, without paying just and equitable damages therefor. Nor shall it occupy, in such operations, more land than is absolutely necessary to open and work successfully such mines of iron or marble as may be discovered. And it shall purchase and pay at the rate of twelve dollars per acre for unimproved lands which it may require

for such purposes. The rights and easements above mentioned shall descend to the corporate successors of the party of the second part, but not to its assigns. The party of the first part hereby agrees and binds himself in no wise to convey or encumber any of the lands hereinbefore mentioned except with a reservation of the rights and easements hereby secured and entrusted to be secured to the party of the second part. All of the above rights and easements are subject, however, to the terms of a certain deed and agreement accompanying the same executed by James L. Reynolds and wife to the party of the first part on the twenty-sixth day of February A. D. 1857, and recorded in register's office of said county in Liber B of Deeds on pages 381 and 382, to which record for further particulars reference is hereby made.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

CHARLES T. HARVEY. [L. S.]

Executed in presence of

JNO. B. WOOD.
M. H. MAYNARD.

378 STATE OF MICHIGAN, } ss:
Marquette County, }

On this 17th day of September A. D. 1857, before me, a circuit court commissioner in and for said county, personally came Charles T. Harvey known to me to be the person who executed the within instrument and acknowledged the same to be his free act and deed.

MATTHEW H. MAYNARD,
Circuit Court Commissioner.

At that time Marquette county was an unbroken wilderness. Mining was scarcely started and the Pioneer was the first furnace erected in the upper peninsula. It was an experiment. Everything had to be imported including labor. In 1860 the entire capital of the company was sunk, and $125,000 more was raised by a mortgage on the property which was also sunk. Shortly thereafter the mortgagees took possession by consent of the company and operated the furnace until August 9th, 1864, when it was destroyed by fire. The mortgagees did not foreclose the mortgage but let the furnace on contract at so much per ton to I. B. B. Case, from 1862 to 1864.

No explorations for iron ore have been made by the Pioneer Iron Company on the lands covered by the 99 year lease until recently and no mining has ever been done on any of those lands by the Pioneer Iron Co., but it cut and carried away the timber within the five years prescribed in the lease.

Sometime in 1857 or 1858 the Pioneer Iron Co. obtained the right from the Jackson Iron Co. to mine ore for its furnaces at the Jackson mine for 25 years. This right was exercised by the Pioneer Iron Co. until it expired in 1882.

Ore in paying quantities was not discovered on the land covered by the 99 year lease until, I think, in 1881. In 1871 ore was discovered on the Pendill property adjoining the Harvey lands, and shortly thereafter Reynolds and Harvey entered into the "definition agreement" relative to "contract A" and the 99 year lease. They then executed mining leases to the late Edward Breitung and
379 he in turn gave sub-leases and options to various parties. These leases, so made by Reynolds, Harvey and Breitung, were all made expressly subject to the 99 year lease which was admitted by Reynolds, Harvey and Breitung in their leases to be valid.

In 1886 ore was discovered on the Buffalo and some time thereafter on the South Buffalo, Queen, Blue and Prince of Wales mines. The late Edward Breitung owned one-half the mineral on those properties (except the Buffalo, which was owned by the Pioneer and Arctic Iron Companies), which he had acquired from Harvey by purchase and mortgage foreclosure.

The other half of the mineral was owned by Reynolds' heirs in 1881. Breitung purchased this half and thereupon he and I organized the Arctic Iron Co. to which, by previous agreement with me, he conveyed said one-half of the mineral so purchased by him from Reynolds' heirs. Breitung was the president of the Arctic Iron Co. and owned one-half of its stock. I was secretary and treasurer and owned the other half. The leases issued by the late Edward Breitung and the companies organized by him or which he helped to organize, such as the Negaunee, Manganese and Arctic, were for twelve, fifteen or twenty years each.

Several options for leases were issued in 1886 for leases for twenty years by the Arctic Iron Co. and Breitung on their joint lands, and made subject to the ninety-nine year lease, but Breitung died in March, 1887, and thereupon, the Arctic Iron Co. added the clause "if still in force but not otherwise" to the former clause admitting the validity of the ninety-nine year lease.

The charter of the Pioneer Iron Co. expired in 1887. In 1889 the constitution of Michigan was amended and a statute was passed providing for the reorganization of corporations whose charters had expired or were about to expire. Under this law the Pioneer reorganized and has extended its charter for another period of thirty years from 1887.

380 Neither Reynolds, Harvey or Breitung have ever served any notice on the Pioneer Iron Company repudiating the ninety-nine year lease or denying its validity. In 1871 Reynolds and Harvey attempted to define its extent in the definition agreement as follows: "Now, therefore, said Harvey declares that said deed was intended to give said Pioneer Iron Company the right, liberty

and license during ninety-nine years to quarry ore to supply the furnace and forges then existing at Negaunee, in September, 1857, and belonging to said company, but was in no sense a grant of any exclusive privileges and gave said company no right to mine more than requisite from time to time for use as aforesaid, and no right to reserve any tract for future supply; and said Reynolds ratifies and confirms said right as herein defined; provided, however, that in case said Pioneer Iron Company shall make any different or more extensive claims, said Reynolds shall not be bound by this confirmation."

The Pioneer Iron Co. paid no attention whatever to the foregoing agreement. The definition agreement between Reynolds and Harvey was an express recognition of the validity of the 99-year lease, at least on the part of Harvey. He attempted to construe its provisions 14 years after executing it, and without notifying the Pioneer Iron Co., but he did not repudiate the lease itself.

Edward N. Breitung, son of the late Edward Breitung, became of age in 1892 or thereabouts. He now owns or controls the bulk of the land covered by the 99-year lease. His mother has a dower interest therein.

He and his mother signed the Prince of Wales mine lease in 1889, I think, before he became of age, but he has ratified it since by accepting royalty for several years—from 1892 to 1898. That lease was for 20 years from 1889, and makes the lands covered by it subject to the 99-year lease "if still in force, but not otherwise."

Neither he nor his mother have questioned the validity
381 of the lease since the death of the father and husband in 1887. They have made no unqualified denial of its validity.

II.

Statement of the Grant and Provisos in Ninety-nine-year Lease.

The granting part of the lease, in reference to minerals and marble, is as follows:

"The party of the first part does hereby let, lease and demise to the party of the second part, for the consideration hereinbefore mentioned and for the full end and term of ninety-nine years from and after the date hereof, all the lands hereinbefore mentioned, and all other lands now owned by the party of the first part in either of the townships above mentioned for the sole purpose of mining and quarrying at its own expense such ore and marble as may be found thereon, and subject to the provisions hereinafter mentioned."

Then follow six provisos limiting the foregoing grant as follows:

1. That the Pioneer Iron Co. "shall not quarry, mine or remove any ores on said lands except such as it shall actually convert into merchantable iron in its own furnaces or forges."

2. "It shall not, in such mining or quarrying operations, use or impair any of the improvements which may be placed upon said lands by other persons, without paying just and equitable damages therefor."

3. "Nor shall it (P. I. Co.) occupy in such operations more land than is absolutely necessary to open and work successfully such mines of iron or marble as may be discovered."

4. "And it shall purchase and pay at the rate of $12 per acre for unimproved lands which it may require for such purposes."

5. "The rights and easements above mentioned shall descend to the corporate successors of the party of the second part, but not to its assigns."

382 6. "All of the above rights and easements are subject, however, to the terms of a certain deed and agreement accompanying the same, executed by James L. Reynolds and wife to the party of the first part on the 26th day of February, 1857, and recorded in register's office of said county in Liber B of Deeds on pages 381 and 382, to which record for further particulars reference is hereby made."

It will be noticed that the consideration for the 99 year lease is the nominal sum of one dollar.

I account for this as follows: The agreement of April 22nd, 1857, whereby Harvey granted to the Pioneer Iron Co. the right in perpetuity to explore for and mine and quarry ore and marble, is also for the consideration of one dollar. But this agreement of April 22nd, was executed on the same day that the deed from Harvey to the P. I. Co. was executed in which the consideration is $25,000. Both the deed and agreement having been executed on the same day, presumably they constituted parts of one entire transaction, and therefore the $25,000 was intended to cover both, hence the consideration of one dollar in the agreement. This agreement of April 22, 1857, while it was actually delivered to the P. I. Co., was not recorded, and it appears to have been merged in the 99 year lease, because they both cover the same ground, and are both for the same general objects.

Therefore the 99 year lease simply superseded and took the place of the agreement of April 22nd, 1857, and of course the nominal consideration of one dollar was retained. But the consideration for the 99 year lease is found in the deed of Harvey to the Pioneer Iron Co., where it is stated as $25,000.

In construing the foregoing provisos to the granting part of the lease it is well to bear in mind the following cardinal rules of interpretation:

1. Conveyances should be liberally construed so as to give them effect, and if they cannot operate as that species of conveyance indicated by the letter, they will generally be held to operate
383 in some other form so as to effectuate the objects which from the whole instrument, and the circumstances and conditions of the title, the parties appear to have intended."

Thayer *vs.* McGee, 20 Mich., 207.

2. "That in cases of doubt or ambiguity the instrument shall be construed most strongly against the grantor."
Campau *vs.* Chene, 1 Mich., 413.

III.

Legal Questions Involved.

While Breitung has made no unqualified denial of the validity of the lease, I understand that his attorneys will claim it to be void for the following reasons:

1. When the charter of the Pioneer Iron Co. expired in 1887, the 99 year lease lapsed for want of a corporate successor according to the following proviso in said lease. "The rights and easements above mentioned shall descend to the corporate successors of the party of the second part, but not to its assigns."

That the lease lapsed and the land was discharged therefrom in September, 1887, and that the reorganization of the Pioneer Iron Co. in 1889 two years afterwards, could not restore the lease to life so as to make it a charge or burden on the land. That such was not the effect of the reorganization act.

Neither was it the intention of the act to restore the lease, and if it was, it would be a law impairing the obligation of contracts.

2. When the 99 year lease was executed Harvey was a cotenant with Reynolds, that Harvey had no right to lease the minerals and reserve the soil or surface, and hence the lease is void.

3. That the Pioneer Iron Co. is not asserting its rights for 43 years has been guilty of laches.

In construing the 99 year lease, it is necessary also to construe the deed from Reynolds to Harvey of February 26th, 1857, as modified by contract A.

384 I am of the opinion that the following points are involved:

1. The deed of February 26th, 1857, as modified by contract A gave Harvey an estate of inheritance in fee simple in the "sole right to mine ore on said lands for the purpose of converting it into merchantable iron in Marquette county."

2. The action of Harvey in executing the 99 year lease to the Pioneer Iron Co. was authorized by the deed from Reynolds to him of February 26th, 1857.

3. The delay of the Pioneer Iron Co. in entering upon the lands including the 99 year lease and exploring for iron ore did not invalidate said lease.

4. Effect of the act of 1889, permitting corporations to reorganize and extend their corporate existence.

5. The proviso in the 99 year lease that "the rights and easements above mentioned shall descend to the corporate successors of the party of the first part, but not to its assigns" is void as being repugnant to the grant and contrary to public policy.

6. No right of re-entry having been reserved in said lease, no forfeiture can be enforced even if said proviso is valid.

7. Said proviso does not render the lease non-assignable.

8. Rights of the Pioneer Iron Co. under the 99 year lease and deed of February 26th, 1857, as modified by contract A, annexed to said deed.

IV.

The deed of February 26th, 1857, gave Harvey an estate of inheritance in fee simple in the "sole right to mine ore on said lands for the purpose of converting it into merchantable iron in Marquette county."

It may be claimed by Breitung that contract A appended to said deed only conferred a life estate on Harvey because no words of inheritance were used in the clause giving him and his assigns the sole right to mine ore for smelting purposes in Marquette Co.

385 If it is only a life estate, it is not very valuable, as Harvey must be over 70.

If the foregoing clause in contract A expires with Harvey's life, the 99 year lease will not be so valuable, because beyond the sole right of mining iron ore for smelting in Marquette county, Harvey only owned an undivided one-half of the mineral when he executed the 99 year lease.

"It is undoubtedly the general rule that in a reservation as well as in the granting clause of a deed, the word "heirs" must be employed to create an estate which will extend beyond the life of the party in whom the estate is vested."

Lathrop *vs.* Elsner, 93 Mich., 601.

The result of the authorities seems to be that where the right reserved creates an estate or is a personal right, the grantee takes only a life estate unless the word "heirs" is used, and it is also customary to use the word forever or some other words equivalent thereto, such as "in perpetuity," etc. The clause granting Harvey the sole right to mine ore for smelting purposes in Marquette county is as follows: "Provided, and it is agreed, however, that the party of the second part or his assigns shall have the sole right, free of cost or compensation to the party of the first part, to mine for their own use or for manufacturing purposes within the present limits of Marquette county, any mineral, ores, or marble found in any of the premises herein referred to."

If this "sole right" was created by contract A, it would require the word "heirs" to make it an estate of inheritance in fee simple, otherwise not.

The definition agreement between Reynolds and Harvey does not attempt to construe contract A as it does the 99 year lease, but refers to it as follows: "of which right the extent as so stated is obscure and doubtful." If it is obscure and doubtful, it must be construed

strongly against the grantor Reynolds and in favor of the Pioneer Iron Co., grantee of Harvey.

Ryan *vs.* Wilson, 9 Mich., 262.
Butler *vs.* Grand Rapids, 85 Mich., 255.

386 The granting part of the deed itself conveyed to Harvey all the lands in fee simple forever. The entire estate passed to Harvey by the deed, "subject, however, to the conditions and agreements of the contract marked A, herewith appended, between the parties hereto concerning the undiscovered minerals on said lands."

Contract A, therefore, does not create a new right in Harvey, but is a limitation of the estate in fee simple conveyed to Harvey by the granting part of the deed. Therefore, when contract A states that Harvey shall have the right, free of cost or compensation, to mine ore for smelting purposes in Marquette county, it gave him nothing new. That right was already granted him in the deed because the greater includes the less.

Contract A can be stated as follows: Provided, that the estate of inheritance granted to the party of the second part in the annexed deed is hereby limited as follows: Said Reynolds reserves to himself an undivided one-half of all ores in said lands, with the right to enter and mine such ores as he may find, and account to said Harvey for his joint half interest therein whether smelted in Marquette county or exported, and also to pay for all unimproved lands necessary for mining purposes at not to exceed six dollars per acre, and pay for improvements at their actual value, to be fixed by arbitration in case the parties cannot agree. Said Harvey shall account to said Reynolds for his joint half interest in all ores mined by said Harvey except such ores as he, Harvey, shall convert into merchantable iron in Marquette county, as to which ores said Reynolds shall have no interest therein.

The foregoing states the actual agreement embodied in contract A, although couched in different language, but it shows clearly that contract A did not create any new right in Harvey. It simply cut down, limited, and narrowed the full estate of inheritance granted him in the deed.

In other words, Reynolds and Harvey had an equal interest in all ore mined on said lands, except such ore as Harvey
387 mined and smelted in Marquette county. As to such ores, Reynolds had no interest therein.

If contract A never existed, Harvey would have the "sole right" to mine ore for smelting purposes in Marquette county by virtue of the estate of inheritance granted him by the deed.

Therefore it cannot be said that contract A created any estate in Harvey.

And hence it was as unnecessary to use the word "heirs" in that connection as in the case of the one-half interest in the minerals reserved to Reynolds in the same contract A. Contract A must be

construed as a whole and not in piecemeal. It was evidently the intention of the parties that Reynolds should have a half interest in all the minerals less what Harvey would smelt in Marquette county.

V.

The action of Harvey in executing the 99 year lease to the Pioneer Iron Co. was authorized by the deed from Reynolds to him of February 26, 1857, as modified by contract A.

At the time that the 99 year lease was made, Harvey owned all the surface rights in the lands covered by said lease and also one-half the mineral.

He also had the sole right, free of cost or compensation to Reynolds, to mine iron ore on said lands for smelting in Marquette county.

Eleven years ago, in 1889, when I was half owner of the Arctic Iron Co. I was of the opinion that the 99 year lease conflicted with the rule laid down in Adams *vs.* Briggs Iron Co., 7 Cush., 361, that a tenant in common cannot convey a specific portion of his undivided interest in the common estate. He can convey an undivided portion of his entire interest, but not a specific portion.

For example a person owning an undivided one-half of a parcel of land cannot convey the minerals in that undivided half
388 and retain the surface. He can sell any undivided portion of his entire half interest, but he cannot sell the surface and keep the minerals, nor can he sell the minerals and keep the surface.

As I understood the facts at that time Harvey was simply a tenant in common with Reynolds. The 99 year lease was exclusively for the right to mine; it affected the mineral and not the surface, except such part as would be necessary to carry on mining.

If such were actually the facts, I would still be of the same opinion. I do not think that a person owning an undivided half of the land can carve it up by giving a lease for 99 years to a third party for mining his half interest, and keep the surface himself.

"The doctrine that a conveyance by a tenant in common of a specific part of the lands held in common, or of a right or easement in the common lands, is void as against the co-tenant, is founded on principle and sustained by many authorities."

Adams *vs.* Briggs Iron Co., 7 Cush., 361.

The supreme court of Michigan has followed the doctrine in 7 Cush., 361, and holds that "it is well settled that where one tenant in common conveys to a stranger any but an undivided interest in the whole of the land where such interest is prejudicial to the rights of his other co-tenants, such conveyance is void as to them."

Benedict *vs.* Torrant, 83 Mich., 181–2.

At that time I did not have the deed of February 26th, 1857, from Reynolds to Harvey in mind.

That deed confers on Harvey and his assigns the sole right to mine iron ore on the said lands for smelting purposes in Marquette county free of cost or compensation to Reynolds.

Harvey, in granting the 99 year lease to the Pioneer Iron Co. only conveyed what Reynolds consented to in the deed of February 26th, 1857.

389 Hence Reynolds was not legally prejudiced by the 99 year lease, because he conferred on Harvey the power to make it.

With the facts in mind now, that I did not take into consideration then, I am clear that the 99 year lease cannot be successfully assailed for want of power in Harvey to make it in 1857.

VI.

The delay of the Pioneer Iron Co. in entering upon the lands included in the 99 year lease and exploring for iron ore, did not invalidate said lease.

1. The lease does not prescribe when the Pioneer shall enter upon the lands for the purpose of exploring for ore. It has the entire term for doing so.

2. Reynolds, Harvey and Edward Breitung recognized the lease as valid on various occasions. This recognition is binding on the present Breitung.

The Pioneer Iron Co. made an actual entry under the lease immediately after it was executed and cut the timber within the five years allowed by the lease.

The district in which the lands are situated was thoroughly discredited by mining experts and geologists for many years, which discouraged explorations until 1871, when ore was, for the first time, discovered east of the Jackson mine on lands adjoining those covered by the 99 year lease. Since that time a great deal of exploring has been done, nevertheless but few mines have been discovered in the entire tract. The Buffalo-Queen-Blue group is virtually one deposit—one large mine, there were one or two other small mines that is all.

If the Pioneer Iron Co. has done no mining, neither has Reynolds nor Harvey nor his grantee, the late Edward Breitung, nor Edward N. Breitung, his son now in possession. They have given options and leases to others, but have done no mining themselves.

It is true that, in the case of Harlow *vs.* Lake Superior
390 Iron Co., 41 Mich., 583, which was also a suit to enforce a 99 year mining lease, it was held that the complainant was guilty of unconscionable delay in asserting his rights.

In that case there was but 160 acres of land covered by the lease, and it was all occupied by the Lake Superior Iron Co. with its mines and improvements. The L. S. I. Co. was in open, adverse, and continuous possession, operating the mines and shipping ore for more than 20 years before Harlow brought suit.

Harlow claimed one-quarter of the mines discovered, opened, and

worked by the money, skill and enterprise of the Lake Superior Iron Co. He also asked for an accounting of one-quarter of the profits for 20 years.

Here the facts are different. The Pioneer Iron Co. asks no accounting from any one. It is not trying to take possession of any open mine discovered and developed by the money of another. It has simply entered upon a piece of land that has heretofore been explored and abandoned by lessees of the late Edward Breitung. The 99 year lease here covers more than 1,000 acres of land, principally barren, unoccupied, unfenced, and worthless, if no mineral exists therein. The timber has been entirely cut off, and there is plenty of room and to spare for Breitung to explore other portions if he so desires, although so far, he has exhibited no inclination to do so.

The surface of these lands to-day, denuded of timber, is not as valuable as it was 40 years ago, before the timber was cut off, which was then valuable for charcoal.

Indeed instead of being a prejudice to Breitung, because the Pioneer Iron Company has waited so long before entering, it is a positive benefit to him.

If the Pioneer entered on the land years ago and paid no attention to the opinions of alleged learned experts and geologists as to the prospects of finding ore, it might have discovered the Blue
391 or the Buffalo or the Queen, and in that case neither Breitung nor his father would have received very much royalty. As it is, they have received a large amount of royalty from those mines. And then, the late Edward Breitung, as well as Harvey and Reynolds, all recognized the 99 year lease as valid, while the L. S. I. Co. repudiated Harlow's 99 year lease from the start. Even the parcel that the Pioneer I. Co. has now entered upon was acknowledged by the late Edward Breitung to be subject to the 99 year lease in his lease to the New York Hematite Company. Nothing has occurred since then to invalidate the 99 year lease. Breitung himself, and his mother, in the lease given to the Prince of Wales Mining Company in 1899, acknowledged that the land upon which the Prince of Wales mine is situated, was subject to the 99 year lease "if still in force, but not otherwise," during the whole time of the Prince of Wales lease, 20 years from 1889. It is true that Breitung was then only 18 years of age, but he is now 29 and has accepted royalty on said lease for about 7 years after becoming of age, during all of which time he has had the advice of lawyers on annual retainers.

Breitung has never repudiated the 99 year lease as void since he became of age in 1892. He does not hold adversely no more than his father or Harvey or Reynolds held, and without an adverse holding open, notorious, hostile, and continuous, the statute of limitations does not commence to run, and no accusation of laches can be maintained.

The bulk of the lands covered by the 99 year lease came to the present Breitung by descent from his father. I believe that he has

purchased a three-eighths interest in a portion of the lands from Henry Hewitt of Neenah or Menasha, Wisconsin, who derived title from Reynolds or Harvey. Lately Breitung has acquired the
392 one-quarter interest of William D. Rees in the Blue and two of the Harvey "lots." All of those interests have come to him burdened by the admissions of Reynolds and Harvey in the definition agreement and in their leases to his father and duly recorded, that such lands were subject to entry for mining purposes by the Pioneer Iron Company under the 99 year lease.

It must be remembered that both Reynolds and Harvey in the definition agreement, admitted the validity of the 99 year lease so far as the 99 years is concerned. Their *ex-parte* attempt to interpret, construe, and define its provisions was a ludicrous and ineffectual attempt to encroach on the province of the courts. But their admission in 1871 that the 99 year lease was in existence is binding on themselves and their heirs and assigns.

VII.

Effect of the Act of 1889 Permitting Corporations to Reorganize and Extend their Corporate Existence.

The fifth proviso to the lease already referred to provides that "the rights and easements above mentioned shall descend to the corporate successors of the party of the second part, but not to its assigns."

Harvey evidently intended that the lease should be held by the Pioneer Iron Company during its corporate existence, and then descend to another corporation. There are no corporate successors to corporations aggregate. Conveyances to corporations usually run to them, their successors and assigns. The stockholders might be deemed to be the successors, although, as a fact, they are the corporation itself, carrying on business as one person, under a corporate name. But corporate successors are nothing if not corporations, and therefore differ from successors. In this, Harvey made a mistake in employing the
393 words "corporate successors" instead of "successors." The words "successors" or "corporate successors" in a deed to a corporation adds nothing because there are no successors or corporate successors waiting for the property of the expiring corporation to descend to them. Sometimes there are corporate successors formed by the consolidation of two or more existing corporations. There was no statute, however, in 1857, allowing mining companies to consolidate, nor for 14 years thereafter.

The charter of the Pioneer Iron Company expired in 1887. There was no corporate successor to which the lease could descend.

But there was a statute which was in existence since 1838, allowing 3 years for corporations to wind up their business after the ex-

piration of their charters. It is still in force and is as follows: "All corporations whose charters shall expire by their own limitation or shall be annulled by forfeiture or otherwise, shall nevertheless continue to be bodies corporate for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property and to divide their capital stock, but not for the purpose of continuing the business for which such corporations have been or may be established."

C. L., 1897, sec. 8534.

This statute was construed in Bewick *vs.* Alpena Harbor Co., 39 Mich., 706, where the court says: "The object of this clause was not to limit but to enlarge the corporate privileges so that corporations whose existence for general purposes was nearing its end, might enjoy the advantage of doing general business during the
394 whole charter period instead of being compelled to begin winding up their affairs before it ended."

The Pioneer Iron Company in 1889, when the reorganization act was passed, was, by virtue of the 3 year statute, a body corporate for the purpose of disposing of and conveying its property.

It held the 99 year lease because the three years had not yet expired, the same as it was holding its freehold property of which it had, at that time, over 3,000 acres. The reorganization act of 1889 in enabling the Pioneer Iron Company to prolong its corporate existence, simply enabled it to hold what belonged to it, so far as the 99 year lease is concerned, that is all.

It held a 99 year lease of which 30 years had expired and 69 years were still left. It was the evident intention of the parties to the lease that it should continue for 99 years. Even the definition agreement makes no question as to the term of the lease. The grantor received his price therefor. No provision existed in the lease providing for its reversion to the grantor or assigns in case there was a failure of persons to take. No such failure was contemplated. The lease having been created for 99 years without any provision for its annulment during that time, the failure of heirs or successors would not destroy the lease no more than it would destroy a free hold, because "A lease for years is a sale of the demised premises for the term."

Fowler *vs.* Bott, 6 Mass., 63.

Therefore, if no statute for reorganizing corporations was passed in 1889, the lease would not lapse. The lease is property, and when there are no heirs, no successors, no one to take, it escheats to the State, the same as any other property under the same circumstances.

395 It is not equitable that an absolute lease with no clause of reverter, with no chance of forfeiture, should revert to the grantor or his assigns.

It is to be conclusively presumed that Harvey received full compensation for the lease for the full term of 99 years. It must also be presumed that the late Edward Breitung paid less for the lands covered by the lease than he otherwise would if the lease had no existence, because the leases executed to him by Reynolds and Harvey in 1871 were given subject to the 99 year lease, and the sub-leases afterwards issued by Breitung were also given subject to the 99 year lease. When the late Edward Breitung took the leases of said lands in 1871 from Reynolds and Harvey, he did so knowing that the Pioneer Iron Company then held a prior lease to mine iron ore on said lands, and that such lease was for the full term of 99 years from and after September 17, 1857, without any clause of reverter or forfeiture.

A lease for years is an estate in lands. "Estates in lands are divided into estates of inheritance, estates for life, estates for years, and estates at will and by sufferance."

C. L., 1897, sec. 8783.

"All lands, the titles to which shall fail from a defect of heirs, shall escheat to the State."

Con., art. XIII, sec. 3.

Practically the lands of a corporation aggregate do not escheat to the State because there are always stockholders to whom the corporate property is distributed. That is to say, the stockholders, in their individual capacity, take the corporate property in proportion to their respective interests when the charter expires.

396 But when a clause is inserted in a conveyance to a corporation providing that the land shall not go to the stockholders, but only to a corporate successor, and when there is no clause providing for reverter to the grantor in case there is no corporate successor, then the rule of the common law as to escheats will apply to corporate, the same as to individual property.

In such case it is more equitable that the property should go to the State than go back to the seller or grantor who was paid in full for it. Hence the doctrine of escheats.

Where a person sells a piece of land in fee simple to another, he has no further interest in it, and if such person dies without heirs, the land escheats to the State.

Where a person gives an absolute lease for a fixed period and does not insert any clause that the lease will become void in case of a defect of heirs during the term, the lessor has no more interest in the unexpired portion of such term than a stranger, and hence such unexpired term would also escheat to the State.

Suppose an owner of a lot in Chicago gives a ground lease for 99 years and is paid his rent in full for the entire term, and inserts no clauses of forfeiture or reverter in such lease, he has no further interest in such lot until the term expires.

Breitung, as grantee of Harvey, has no interest whatever in the

99 year lease for the simple reason that none was reserved by Harvey and hence he has no right whatever, no more than any other stranger to the lease, to attack the law of 1889 providing for the reorganization of corporations.

Furthermore, the act of 1889 did not impair the obligation of any contract even if it had the effect of saving the lease.

It may be admitted (for argument's sake only) that if
397 the act was not passed the lease would lapse and become void and Breitung's lands would be released from its operation, and yet the act restoring vitality to the lease would not impair the obligation of contracts nor destroy vested rights.

If the lease would become void as against Breitung on the expiration of the Pioneer charter, and if an express statute was passed having for its object the providing of legal machinery to restore the lease, it would still neither be an impairment of the obligation of any contract nor the destruction of any vested right.

Breitung might claim that the lease expired and that the object of reorganizing under the act of 1889 was burdened by it, and that this would be creating a new contract without his consent.

To this it may be replied that the land came to him burdened with this lease for 99 years and presumably his father, in purchasing the land, paid less for it than he otherwise would if there had been no lease, and therefore, in equity and good conscience, he must be presumed to have consented to any law passed to protect the lease so that its owners would have the benefit of that for which they had their money.

"Contracts are not impaired but confirmed by curative statutes. There can be no vested right to do wrong."

Randall *vs.* Kreiger, 23 Wall., 149.
Satterlee *vs.* Matthewson, 2 Pet., 380.
Watson *vs.* Mercer, 8 Pet., 88.

Thus, a woman joined with her husband in conveying a piece of property in Minnesota. She did not acknowledge the deed properly and under the law her right of dower was not barred. After her husband's death she brought suit for her dower. In the
398 meantime the Minnesota legislature passed an act validating the deed. She complained that as the deed was void so far as her dower was concerned, there was nothing to validate, and that it was in effect creating a contract, that it was taking away her dower to which she had an absolute right, but the Supreme Court of the United States held it competent for the legislature to cure defects in contracts so as to give effect to the intention of the parties.

Randall *vs.* Kreiger, 23 Wall., 137.

"It is not easy to perceive how a law which gives validity to a void contract can be said to impair the obligation of that contract."

Satterlee *vs.* Matthewson, 2 Pet., 380.
Gross *vs.* Mortgage Co., 108 U. S. 488–9.

The act of the General Assembly of Illinois in force July 1st, 1875, validating loans previously made in that State by corporations of other States or countries authorized by their respective charters to invest or loan money, is not in conflict with the contract clause of the Constitution of the United States. In this case the mortgage given for the loan was void when made, but the legislature afterwards validated it.

Gross *vs.* Mortgage Co., 108 U. S., 477.

I am therefore of opinion that under no circumstances would the lease lapse and the land of Breitung be released from its operation, and that Breitung can have no standing in court to attack the law of 1889 no more than any other stranger, because he was not injured by its passage.

VIII.

The proviso in the lease that "The rights and easements above mentioned shall descend to the corporate successors of the party of the second part, but not to its assigns,"
399 is void, as being repugnant to the grant and contrary to public policy, because:

1. There are no corporate successors to corporations such as the Pioneer Iron Co.

2. If the above proviso makes the lease non-assignable it would not go to the heirs or assigns of Harvey, because there is no clause of reverter.

The proviso is therefore inoperative and hence void.

"And where a condition subsequent is void, the grantee takes the estate clear of conditions."

Conrad *vs.* Long, 33 Mich., 78.

In this connection it is worthy of note that the deed in fee simple from Harvey to the Pioneer Iron Co. of April 22nd, 1857, was to "the said parties of the second part (Pioneer Iron Co.), their heirs and assigns forever, in corporate succession."

Clearly no lawyer drew such an instrument, as the word "heirs" is not used in conveyances to corporations, and it would seem that Harvey had a penchant for endeavoring to place lands in the possession of corporations forever in "corporate succession" to the exclusion of natural persons.

Harvey was one of the principal incorporators of the Pioneer Iron Co. and therefore knew, as a fact, that it was organized only for 30 years, and he is presumed to have known that under the constitution and laws then existing, corporations like the Pioneer could exist for only 30 years.

3. The proviso would be void even if corporate successors to expiring corporations were in existence.

If there are corporate successors to corporations similar to the

Pioneer Iron Co. they must bear the same relation to their defunct predecessors that heirs bear to their ancestors.

400 A proviso in a conveyance limiting it to the heirs of the party of the second part and forbidding him to assign, would be clearly void as contrary to the laws relative to alienation of lands. A proviso limiting the lands to corporate successors to the exclusion of natural persons would not only be in violation of the laws relative to alienation of lands, but absolutely repugnant to all our ideas of public policy.

This proviso that the lease shall descend to the corporate successors is void on grounds of public policy because it is an attempt to confine the possession and enjoyment of a large body of lands to corporations exclusively for 99 years, to the exclusion of natural persons.

If a lease can be made so as to be held only by corporations, to the exclusion of natural persons for 99 years, why not for 999 years.

The proviso is unique and, I think, unprecedented, and it is to be hoped that it will never be held to be the law that land can be held by corporations to the exclusion of natural persons for 99 years, or for any number of years.

It is true that corporations, with perpetual charters, may hold lands necessary for the existence of their corporate franchises perpetually, but a clause in a conveyance of land to such corporation, forbidding them to sell such land to any but a corporation, or providing that such lands should descend only to corporations, would be void as against public policy.

If the proviso in the 99 year lease now under consideration is valid, it will develop new methods for extending corporate monopoly and control of property. But the supreme court of Michigan, in common with all courts, holds that "conditions in a deed are void if against public policy."

Smith *vs.* Harris, 56 Mich., 314.

401 No right of re-entry having been reserved in said lease, no forfeiture can be enforced, even if such proviso is valid.

The proviso that "The rights and easements above mentioned shall descend to the corporate successors of the party of the second part, but not to its assigns," is not a condition subsequent that can be enforced by forfeiture, for the reason that no such right has been reserved. The proviso is therefore a mere covenant. There is sometimes some difficulty in distinguishing between a condition subsequent and a covenant. A condition subsequent provides either for the enlargement or destruction of the estate on the happening of some event in the future. There being no corporate successors, there is then nothing left of the proviso except that "the rights and easements above mentioned" shall not descend to the assigns of the P. I. Co. But no penalty is reserved in case the lease is assigned. No

reverter to the grantor is provided for in case of the violation of this mere covenant, for it is nothing more.

"It is settled law that when the covenant is not linked with a condition there can be no forfeiture.

"So though one covenant in a lease is to surrender the premises upon a certain contingency, it does not give the lessor a right to enter and expel the lessee upon the happening of such contingency unless there is a right of re-entry therefor reserved to the lessor in the lease."

1 Washb. R. P., 5th ed., 511.

"And this applies to all covenants in leases; the lessor gains no right to re-enter and expel the lessee for a breach thereof unless there is some proviso or condition contained in the lease giving such right of re-entry."

1 Washb. R. P., 5th ed., 511.

402 "The insertion of a condition in a lease moreover is the only by-way of defeating the same for a breach of covenant therein unless such breach is construed into a determination of a conditional limitation by which the lease is to continue, while or so long as the lessee keeps his covenant and the like."

1 Washb. R. P., 5th ed., 506.

"It is quite unnecessary to state that there is no conditional limitation in the 99 year lease of the Pioneer Iron Co.

"The erasure of a re-entry clause in a lease divests the landlord of the statutory remedy for recovering possession on the tenant's default in paying rent because no terms of limitation are left in the lease and the covenants are no longer linked with a condition."

Langley *vs.* Ross, 55 Mich., 163.

"And in construing the instrument in question the fact that the clause containing the proviso respecting the payment of rent and default in performing any of the covenants and giving a right of re-entry, are stricken out, is quite significant. What would have been conditions had the proviso not been erased, are left to stand as mere covenants, relieved of any condition whatever. It follows that the lessee does not hold over contrary to the conditions or covenants of the lease."

Ibid., 166.

In the foregoing case the lessee covenanted to pay the insurance and taxes and failed to do so. The lessor brought suit to recover possession on the ground that the lease was forfeited, but as there was no clause of forfeiture for violating the covenants the court held that the lease was not terminated.

403 It is therefore very clear that if the Pioneer Iron Co. assigned the 99 year lease at any time after receiving it from

Harvey in 1857, it could not be forfeited because there was no agreement to that effect between the parties to the lease.

The lease was therefore assignable in 1887 at the termination of the charter of the Pioneer Iron Co., and that being the case, it stood on the same footing as the other property of the company. It can be assigned now by the Pioneer Iron Co. to any person or corporation.

X.

Said proviso does not render the lease non-assignable.

It is clear assumption that the 99 year lease is not assignable.

The only clause bearing on the subject is where it says that "the rights and easements above mentioned shall descend to the corporate successors of the party of the second part, but not to its assigns."

That is to say, the lease shall not descend to the assigns of the Pioneer Iron Co. The clause is ridiculous. Assigns take by purchase and not by descent. Of course the property will not descend to them. They will have it already if they are assigns of the Pioneer Iron Co. If it was the intention of Harvey to make the lease non-assignable, he should have used apt words in doing so, especially when he tried to tie up a large body of land exclusively in the hands of corporations for 99 years.

He should have said "this lease shall not be assigned by the party of the second part, but shall descend to its corporate successors."

The grantor, Harvey, not having used apt words or non-assignability in the lease, courts will not inject them into it for the purpose of aiding a forfeiture.

404 Clauses of forfeiture in leases are not favored.
Miller *vs.* Havens, 51 Mich., 482.

It may be said that Harvey intended that the lease should be non-assignable, that he understood such to be the meaning of the proviso. But it cannot be said that the party of the second part also understood it in the same way. It is not reasonable to suppose that the party of the second part gave to the proviso the literal meaning of the language employed, to-wit: that the rights and easements shall not descend to its assigns. The words "descend" and "descent" have a well understood meaning in the law relative to lands. These words are used only where the lands go from the ancestor to the heir after the death of the former.

Parties take by descent and by purchase.

Those who take by descent are heirs, while those who take by purchase are assigns. Therefore, as I have already said, it is absurd to say that property descends to assigns.

XI.

Extent of the Rights of the Pioneer Iron Company under the 99 Year Lease.

I have shown, in subdivision IV of this brief, that Harvey was given the sole right to mine iron ore, free of cost or compensation to Reynolds, for the purpose of converting the same into merchantable iron in Marquette county, and that this was an estate of inheritance to Harvey, his heirs and assigns forever.

In his deed to the Pioneer Iron Co. Harvey conveyed the foregoing right absolutely, but in the 99 year lease he limited the right of the Pioneer Iron Co. to mining a sufficient quantity for its furnaces and forges.

405 The Pioneer was given the right to go upon all the Harvey lands to obtain ore for its furnaces and forges, as follows:

"2nd. The party of the first part does hereby let, lease and demise to the party of the second part, for the consideration hereinbefore mentioned, and for the full end and term of ninety-nine years from and after the date hereof, all the land hereinbefore mentioned, and all other lands now owned by the party of the first part in either of the townships above mentioned, for the sole purpose of mining and quarrying, at its own expense, such ores and marble as may be found thereon, and subject to the proviso hereinafter mentioned."

"Provided it shall not quarry, mine or remove any ores on said land except such as it shall actually convert into merchantable iron in its own furnaces or forges.

The lease does not require the ore to be smelted in charcoal furnaces, and it cannot be contended that the parties expected that charcoal furnaces would be the only furnaces in use in Marquette county for 99 years. Who can say now what style of furnace will be the most profitable 30 or 40 years hence?

The Pioneer Iron Co. in converting the ore mined into merchantable iron can adopt any process whatever, the present land owner has no interest therein. It is none of his business. All that he can claim is that it must be done in Marquette county in the furnaces or forges of the Pioneer Iron Co. The Pioneer is not limited to the furnaces in existence when the lease was made Sept. 17th, 1857.

The lease does not say furnaces then existing. It means furnaces of the Pioneer Iron Co. which may be in existence during the term of the lease, and the number is not limited. Neither is the size of the furnaces.

406 It was not the expectation of the parties that the Pioneer Iron Co. should not expand. The general mining law, which is its charter, was always subject to amendment by the legislature, and has been amended so that the Pioneer Iron Co. can increase its capital to $2,500,000. Even in 1857, although organized with $125,000, it could increase it $500,000. Therefore it cannot be main-

tained that the parties intended or expected that the Pioneer should never increase its business or capital stock.

It is also significant that while the agreement of April 22nd, 1857, granted to the Pioneer Iron Co. only the right to mine ore sufficient for its "establishment," the 99 year lease granted the right to mine sufficient for its furnaces and forges, thus using the plural instead of the singular number in making the grant.

E. N. Breitung now represents the joint rights of Reynolds and Harvey in the lands covered by the 99 year lease, except the Pioneer Arctic lands; the small farms of Gaffney, Boyer, etc., and the Buffalo, Queen, Blue and Lucky Star group, where the Arctic Iron Co. owns the Reynolds interest.

The Pioneer, however, has a right to enter and explore for ore on any lands covered by its 99 year lease and mine and carry away, for smelting purposes in its furnaces in Marquette county, any ore that it may find, but it cannot enter upon or take possession of any of the mines that may be discovered by lessees of Breitung or of the Arctic I. Co., Boyer, Gaffney, etc.

Neither can Breitung or his lessees interfere with the Pioneer Iron Co. and its exploring or mining operations.

The right of Breitung and the P. I. Co. to mine independently of the other is entirely derived from the deed and contract A of Reynolds to Harvey. At common law co-tenants are not permitted to commit waste, and mining by co-tenants on the common lands is waste.

407 "A tenant in common cannot commit waste upon the common lands, and if he does he is subject to an action on the case, and must respond in damages."

Benedict *vs.* Torrent, 83 Mich., 181–2.

It is true that the right of the Pioneer Iron Co. is floating and indefinite until entry made on the land and the finding of a mine, but after that the Pioneer can acquire title in fee to such portion of the surface as it may need for mining purposes. Therefore, when the Pioneer finds a mine and buys so much of the surface as is necessary it becomes a tenant in common with Reynolds and Harvey and their assigns or grantees.

The rights, then, of the Pioneer Iron Co. briefly stated are, that it can enter and explore for ore, and after finding a mine it can acquire so much of the unimproved surface as may be necessary for mining purposes at $12 per acre, and acquire surface improvements at their equitable value. It can convert the ore so mined into merchantable iron by any process in its furnaces or forges in Marquette county.

These furnaces may be charcoal or coke or any other kind hereafter invented, and it may have as many furnaces as it can afford.

Possibly it must own the furnaces, but it can buy a furnace by paying a nominal sum down, take a deed and give a mortgage for almost, if not all, the entire purchase money at a rate of interest that

would equal to the rent of a leased furnace. It isn't necessary to build or pay for a furnace.

It certainly can keep any mine discovered by it. Whenever ore is discovered, nothing should be said until its entire length and breadth is ascertained, and then it can be staked out and held, no matter about the apparent extent, because the size of merchantable ore bodies is often deceptive.

408 Besides, it is always inequitable for one person to take the body of ore discovered by another, or any portion of it, when both co-tenants have independent rights to explore for and mine ore on the same lands. The Pioneer having a right to have any number of furnaces, it cannot be said that any body of ore discovered by it is too large for its own use. It is not necessary that it should use all the discovered ore immediately.

The Pioneer cannot enter upon the open mines of Breitung or his tenants no more than they can enter on the mine of the Pioneer when it finds one.

It can, however, enter upon land that Breitung may lease to others, and may explore thereon, but must not trespass on the explorations of Breitung's lessees, nor invade or take possession of any portion of such land which can fairly be regarded as containing an extension of the same deposit which may be then discovered, opened or worked by such lessees of Breitung.

Breitung's lessees have the same rights as Breitung, no more, no less. Neither section nor sub-division lines need be regarded, but an entry may be made upon any part of the lands covered by the 99 year lease, which neither Breitung nor his lessees are exploring, or where no mine is actually known to exist.

The question here involved is largely one of fact. And in this connection it may be proper to state that even if the Pioneer Iron Co. leases furnaces from others and smelts ore therein which has been mined by it on lands covered by the 99 year lease, no forfeiture of the lease can be had by Breitung for the reason that no right of forfeiture has been reserved in the lease. In such case Breitung would be left to his action for damages or remedy by injunction.

409 I cannot conceive of any circumstances under which a forfeiture of the lease would be decreed.

W. P. HEALY.

Chicago, February 27, 1900.

I have carefully examined Mr. Hayden's brief, and I concur in his views on the following points not touched upon by me in the foregoing brief:

1. No interest of value can now be acquired from Charles T. Harvey.

2. The agreements between the Arctic Iron Co. and Pioneer Iron Co. in regard to giving joint leases of the mineral interests owned in common by them, should be cancelled.

3. It is necessary to take actual possession and commence explorations on any particular parcel of land in order to prevent Breitung or his lessees from taking possession of and exploring such parcel.

4. The grantee of the Harvey lots (except lots 1, 2, 3 hereinafter referred to and owned by Boyer and Mrs. Gaffney) have no better title than Harvey had at the time that he conveyed such lots.

5. The reorganization of the Pioneer Iron Co., having been accepted and approved by the State authorities, it cannot be attacked collaterally by Breitung.

As to lots 1, 2, 3 in Harvey's unrecorded subdivision, Harvey, in laying out his unrecorded plat, made a mistake in the boundaries of his land, which was adjoining that of the Pioneer Iron Co. Lots 1, 2, 3, and possibly part of 4, of Harvey's subdivision, in reality, belonged to the Pioneer Iron Co. The mistake was discovered in 1874 by Alexander Maitland, and the Pioneer Iron Co. brought an ejectment against Boyer and Gaffney, grantees of Harvey. They appealed to Harvey to protect them, and there being an old
410 judgment against the Pioneer Iron Co. held by the Passumpsic bank, he caused execution to be issued on the judgment and sold the lands, which were bid in by Boyer and Gaffney. Thus, their title is an execution sale against the Pioneer Iron Co. Their title from Harvey was a nullity.

I am of the opinion that the right of the Pioneer Iron Co., under the 99 year lease, to enter and explore on said lots 1, 2, 3 was not affected by such execution sale for the reasons given by Mr. Hayden. Merger of two estates in one person will not be presumed where it would be against the interest of such person that such estates should merge.

When the Pioneer Iron Co. purchased the land in which said lots 1, 2, 3 are included, it only acquired the right to one-half the mineral therein. It already had the right, under the 99 year lease, to all the mineral that it could convert into merchantable iron in its furnaces in Marquette county. It cannot be supposed that the Pioneer Iron Company intended to sacrifice that right when it purchased the parcel from Harvey, because Reynolds still owned one-half the mineral in such parcel.

The conclusion is therefore inevitable that the Pioneer Iron Co. in buying all the surface and one-half the mineral in said parcel of 1,200 feet off the west side of the southeast quarter of section six, retained its already existing right to mine ore on said land sufficient for its furnaces and forges in Marquette county under the 99 year lease, free of cost or compensation to Reynolds, who still continued to own one-half the mineral in said parcel.

This reminds me that, in 1889, the Pioneer Iron Co. conveyed to the Arctic Iron Co. all its interests in the mineral in 24 acres of land immediately west of and adjoining Boyer, and the Arctic Iron Co. conveyed to the Pioneer Iron Co. all its interests in the mineral in

22 acres west of and adjoining said 24 acres. Whether the
411 conveyance from the Pioneer to the Arctic included its right, under the 99 year lease, I am now unable to say, as I do not remember the language of the deed. Nothing was mentioned about the 99 year lease at that time, so far as I now remember.

In regard to tax titles extinguishing mineral interests which have been severed from the surface, it is a question of some difficulty.

My own opinion is that such interests can be made taxable, and may be sold for non-payment of taxes, but that the legislature has not, as yet, authorized the taxation of such interests.

Where a person owns an undivided interest in a piece of land he can ascertain his proportion of the tax on the entire parcel with mathematical certainty and thus he can pay his tax and save his interest, although his co-tenants owning the remainder allow their interests to be sold for the taxes.

But where a person owns all the mineral and some one else owns all the surface or soil, if the land is assessed as an entirety, it would be simply impossible to ascertain with mathematical certainty the proportion that the mineral owner ought to pay, and that being the case, I do not think that a tax sale of the parcel would cut off his rights.

When the mineral has been conveyed to one person and the surface to another, each has an estate in the land as separate as if divided by line fences, and ought to be assessed separately.

So long as the law permits separate estates in the mineral and surface to be carved out of land and held by different persons, such separate estates, being recognized as lawful, must be assessed and taxed separately.

I think, therefore, that the tax title on the lots sold for taxes did not extinguish the right of the Pioneer Iron Co. under its 99 year lease.

412 I also concur with Mr. Hayden that those tax titles are void by reason of the imperfect descriptions on the tax roll.

W. P. HEALY.

Chicago, February 27, 1900.

Re-direct examination by Mr. SHAULL:

Q. I now show you a paper dated the — day of February, 1899, between Edward N. Breitung and Charlotte G. Breitung, his wife, and Mary Kaufman and the Arctic Iron Co., a corporation of the State of Michigan, and —— —— party of the second part, attached to another paper, which is a form of lease which you have identified and is marked Exhibit Z, upon which appears the erasure of the name of the Pioneer Iron Co. and ask you if you have seen that paper before?

A. Why, yes, it is one of the options and leases that either Mr. Mather or Mr. Hayden either brought to me or sent to me.

Q. I call your attention to certain Harvey lots endorsed on the

outside thereof, and ask you whether that was on it when it was handed to you?

A. I think it was.

Mr. SHAULL: I offer it in evidence.

Mr. HOYT: It is objected to for the reasons already stated in regard to the other paper.

"Received and marked Exhibit A 2."

"Said Exhibit 'A 2' is an unexecuted option with a form of lease attached from Edward N. Breitung, Charlotte G. Breitung, his wife, and Mary Kaufman of Marquette county, and the Arctic Iron Company, a Michigan corporation, of the first part, and —— —— of the second part, running for three months and covering that part of the north half of the southeast quarter of the southeast quarter and that part of the north-
413 east quarter of the southwest quarter of the southeast quarter of sec. 6, town forty-seven north of range twenty-six west at Negaunee, lying north of Partridge brook; also the northeast quarter of the southeast quarter and the east half of the northwest quarter of the southeast quarter of said sec. six; also that portion of the northwest quarter of the southwest quarter of sec. five, all in said town and range designated upon the map of Harvey's addition to the city of Negaunee as lot thirteen; for the purpose of exploring for iron ore. This option also contains the following language: 'The Arctic Iron Company owns an undivided one-half interest in the minerals in said lands above described and various other parties own other undivided interests therein, the same having been conveyed to them in the form of lot of a subdivision known as Harvey's addition.'

The said option has attached thereto a printed form of joint mining lease in the same form as Complainant's Exhibit Z. There *has* been stricken out from the 1st clause of said instrument the words, "and the Pioneer Iron Company, two," by drawing a pen through same, and in the place where the said words are stricken out the letter "A" is interlined. Further on in said instrument, the clause reading "One-half of the ground rent and royalty shall be paid by said part- of the second part to the Arctic Iron Company and one-half to said Pioneer Iron Company" had been changed by drawing a pen through the words "said Pioneer Iron Company" and inserting where said words are stricken out the words, "The other parties in proportion to their interest." Further on in said instrument the clause reading "Said part- of the second part shall also on or before the tenth day of each month in each year furnish a written report to the Arctic Iron Company and a duplicate thereof to the Pioneer Iron Company aforesaid," has been so changed with a pen that the words "The Pioneer Iron Company aforesaid" are erased, and in lieu thereof the following words are inserted: "Each of the other parties." Upon the outside of this exhibit appears in lead pencil the words "the Harvey lots," and on

the outside thereof where the Arctic Iron Company and
414 Pioneer Iron Company are printed as lessors the words "The Pioneer Iron Company" have been erased and the words "others" inserted, so that the indorsement as erased reads, "Arctic Iron Company and others." The blank lease referred to in the option is a mining lease and places no restriction upon the disposition of the ore that should be mined under it, and makes no reference to any interest of the Pioneer Iron Company in the minerals in the lands described in the option.

Mr. SHAULL:

Q. I now show you a paper dated the — day of Feb., 1899, between the Arctic Iron Co., party of the first part, and —— —— party of the second part, to which appears attached a form of lease, the same as Complainants' Exhibit Z, heretofore introduced, and the name of the Pioneer Iron Company erased therefrom, and several erasures appear in it, and ask you if you know what that paper is?

A. Yes, that is one more option and lease.

Q. A proposed option?

A. A proposed option and lease. They were not signed by Mr. Mather or Mr. Hayden.

Q. Upon the outside thereof I show you an endorsement, the first word I cannot read, can you read it?

A. I can't read it.

Q. What is the rest of the endorsement?

A. It says something about section 6 of the Arctic; probably somebody else can tell what it is.

Q. Was it there when you received it?

A. I think it was.

Mr. SHAULL: I offer the paper in evidence.

Mr. HOYT: The same objection continued.

(Paper marked B 2.)

Said Exhibit "B 2" is an unexecuted mining option with form of lease attached, wherein the said Arctic Iron Company is lessor
415 and —— —— is lessee. It is given for three months and entitles the lessee to enter and explore for iron ore on the 24 25-100 acres of land embraced in the deed from the Pioneer Iron Company to the Arctic Iron Company, of date Sept. 14, 1889, as designated upon plat No. 7. Attached thereto is a printed form of lease wherein the Arctic Iron Company and the Pioneer Iron Company names are printed as lessors, and in the first clause of said printed form of lease thereto attached are erasures with the pen, the same as appears in Complainants' Exhibit A 2.

Further on in said lease in a clause which provides for unpaid installments or royalty to be paid on demand to "each of" said parties of the first part, the words "each of" are erased in ink.

Further on in said instrument occur- the following clause: "One-half of the ground rent and royalty shall be paid by said party of

the second part to the Arctic Iron Company and one-half to said Pioneer Iron Company, to be paid at such places and to such persons or corporations as may be designated by each of said parties of the first part from time to time." This clause has been erased with pen and ink by drawing an ink mark through same.

On the outer side thereof appear the words referred to by the witness, "Irregular piece in section six Arctic," written in lead pencil.

Printed on the outside thereof is the following:

"Arctic Iron Company and Pioneer Iron Company, two —," from which has been erased with pen and ink, "and Pioneer Iron Company."

The blank lease referred to in the option is a mining lease and places no restriction upon the disposition of the ore that should be mined under it, and makes no reference to any interest of the Pioneer Iron Company in the minerals in the lands described in the option.

Re-cross-examination by Mr. HAYDEN:

It might have been two years ago and it might have been
416 three years ago that Mr. Mather asked for this Tracey 40. A few months ago, while this suit was pending, I sent for you to come to my office. I wanted to see before the suit went to trial whether it wasn't possible to compromise, because I never wanted to try lawsuit if it could be compromised on reasonable terms, but you elected that you didn't want to compromise. You visited my office, I made a proposition.

Q. What was the proposition?

Judge BROWN: The proposition made under the circumstances we object to.

A. I made a proposition that the parties should purchase at some price that could be agreed upon between us and a lease of some portion of the Harvey lots, and if that proposition did not suit you to send in your counter-proposition and we would consider it, but you said, "Oh no, we don't care whether we settle or not."

Q. Did I ask you to put it in writing?

A. Yes, you did.

Q. Did you refuse?

A. No, I didn't.

Q. Did you not say at once that you would not put it in writing?

A. I did not. I said it was rather insulting, but that is what I could expect from you; that is what I said.

Q. Was it not upon this same occasion that I told you that Mr. Mather would insist as a condition of settlement upon having a lease of some of these 40's of the Negaunee Iron Co.?

A. He has always wanted that. I told you that wasn't anything new—for the last three years, anyhow.

Q. Since he has been connected with the Arctic Iron Co.?
A. Well, before.
Q. Before?
417 A. Yes, because I remember I told him at the time he said he was going to buy out Mr. Healey, he wanted to know—in fact, he asked me if I wouldn't try and help him to buy the stock. I told him yes if he would pay a decent price for it.
Q. As a matter of fact, right on that point, were you not entirely ignorant of the negotiations with Mr. Mather and the sale; did you not complain both to Mr. Mather and Mr. Healey and Mr. Kaufman and myself about the sale?
A. I didn't because I told Mr. Mather at Ishpeming——
Q. All right if you say you didn't. Did you not insist, too, in this conversation at your office a few months ago, as a condition of any compromise of this that Mr. Mather would want a lease to enable him to ship the ore from these Negaunee 40's or some of them, such as he would select; did you not say that you were not entertaining any such proposition as that?
A. No. I told you that after what had passed between us, leases were out of the question. We couldn't have very amicable business relation and I wanted to sell, to compromise in that way.
Q. Is it not a fact that the only talk about these 40's of the Negaunee Iron Company or claim by the Negaunee Iron Company in 6, 7 and 8 was had after this suit was commenced, and in the way of negotiations regarding settlement asked for by yourself and Mr. Kaufman?

Judge BROWN: We renew the objection.

A. No, sir, we had great many talks about that before this suit was started.
Q. Do you know that Mr. Kaufman asked us for such a settlement?
A. I don't know whether he did or not.
Q. You don't know that I went to your office at the request of Mr. Kaufman to see if you would give us a lease on these 40's of
418 7 and 8, or a portion of them such as we thought we would settle on?
A. Mr. Hayden, you just told me that you came on my invitation.
Q. Did you not know that before that I came to your office and talked with you?
A. When?
Q. Before this occasion when you asked me to come, since this suit has been pending.
A. I don't remember.
Q. Did I not say to you that we wanted a lease under which we could ship ore from that property and you have always said you would not give a lease?
A. I think I stated my position, I didn't care to deal with you

folks. I was willing to sell you something to get out of it, compromise or anything, but I didn't like a lawsuit and I didn't want to enter into business relations with you and give you a lease, because——

Q. Didn't you at the first talk say that you would give us some of the 40's in *8* and 8, give a lease under which we could ship ore, provided you could have the right to name the 40's you would give, after we had made our selection?

A. I don't remember anything about it particularly, except this, that you said it wasn't acceptable unless it was in writing.

Q. Didn't I say to you at that time that you have continually lied to us, and we couldn't accept any terms or statements of yours whatever unless you put it in writing? I told you that, didn't I?

A. Yes, you did, and I said that is just what I could expect from you.

Q. I was justified in saying it, too, wasn't I?

A. No, you were not.

Q. Have the Arctic Iron Company done any business in this county or State or any other place?

419 A. Why, some business. I don't know just what.

Q. Can you name any of the business that the Arctic Iron Company ever did?

A. Why, let's see, I suppose they did the business they were organized for, giving leases and options and working the property. I don't know what they have done.

Q. Did they ever do any mining of iron ore?

A. I don't know whether they have or not.

J. F. FOLEY, recalled by Mr. Hayden, further testified as follows:

I don't know of the Negaunee Iron Company ever conducting any of those explorations which I spoke of being conducted south of Negaunee. I don't know of Edward N. Breitung conducting any of them. I remember a drill hole Edward Breitung and myself put down on the Baraga, that I forgot about when I was on the stand before. I never knew of the Arctic Iron Company doing any business up there in these operations, mining or exploring.

Examination by Mr. SHAULL:

I remember sending cores from that drill hole to Edward N. Breitung. He was in Marquette then. I think I did send him a core when he was in Europe. I showed him some cores in Marquette. I don't remember whether I sent any of them to Europe.

HENRY G. ROTHWELL, sworn on the part of the complainants, testified as follows:

Direct examination by Mr. SHAULL:

I am a civil mining engineer. I have followed that occupation since 1862. I have had experience in iron mines. I have had experience in the mines in northern Michigan on the north
420 ranges. I was for 4 years with the Loretto and Appleton Mining Companies and I was with Mr. Breitung since 1895.

Q. Did you ever examine what is known as the Davis mine, spoken of here in court as the Davis mine?

Mr. HAYDEN: That is objected to as incompetent and immaterial.

A. I did.

I think it was in the winter of 1895 and 1896. No ore was mined from that mine after I made that examination that I know of. The mine showed ore. I made an examination of it with Mr. Breitung. My opinion was, as I recollect now, I thought there was between 30,000 and 40,000 tons in sight.

Mr. HOYT: The same objection continued.

The mine was opened up. (Same objection.) There were levels and drifts and machinery underground, all the appurtenances for carrying on a mine.

Q. How long after you made that examination did it fill with water?

Mr. HOYT: The same objection continued and the question is objectionable because it is improper and is leading.

A. That I cannot state, Mr. Shaull.

I was sent on business to Wyoming after making the examination and my impression is that the mine filled up after that, but it might have filled up before I went. I am not sure about that. (Same objection.) I think the machinery wasn't removed before it filled. There were some surface improvements there, an engine house and shafts and skips and hoisting engines, the usual equipment on the surface for a mine and for operating one.

JAMES WALLACE, sworn on part of complainants, testified as follows:

421 Direct examination by Mr. SHAULL:

The package of papers you show me is composed of leases given by the Manganese Company to various people, 56 of them in this bundle. They are on sections 6, 7 and 8. Most of them are on an old form.

Q. I show you a paper dated October 13, 1894, between the Manganese Iron Company, a corporation organized under the laws of

the State of Michigan, and Joseph Smith, signed by the Manganese Iron Company by Edward Breitung president, and by Joseph Smith, his mark, and witnessed by Frank Pearce. Are you acquainted with the form?

A. Yes, I have seen several of them.

Q. I now show you Complainant's Exhibit U again and ask you to look at that carefully.

A. Yes.

Q. I will ask you now whether some of them are on the old form and some of them of the new form?

A. Yes, sir.

Q. Fifty-six leases referred to by you as being in the bundle which you now hold in your hand, I will ask you if they are all either on the one form or the other which I now hold in my hand.

A. They are.

Mr. SHAULL: I now offer the Smith lease in evidence.

Mr. HOYT: We object to it as incompetent and immaterial.

Paper marked Exhibit C 2 and is as follows:

This agreement, made and entered into this 13th day of October A. D. 1884, between the Manganese Iron Mining Company, a corporation organized under the laws of Michigan, of the city of Negaunee, in the county of Marquette and State of Michigan, party of the first part, and Joseph Smith of the same place, party of the second part;

422 Witnesseth: The said party of the first part, in consideration of the rents to be paid and the covenants and conditions to be observed, kept and performed by said party of the second part, as hereinafter set forth, does hereby let and lease to said party of the second part, the lot or parcel of land situated in section No. six in township forty-seven north of range twenty-six west, in the city of Negaunee, aforesaid, known and described as follows: The lot numbered one (1) upon which the house of said party of the second part now stands, being the parcel of land enclosed around said house, and containing about one-half acre. For a further and more particular description of which reference is hereby made to a map made by George P. Cummings, civil engineer, showing the location of said house on said section, which map may be found on file in the office of Edward Breitung, in said city of Negaunee. Being the house formerly owned and occupied by M. T. Gaffney.

Said party of the second part hereby rents said premises as a tenant at will for no special time, on the terms and conditions hereinafter set forth, to be occupied as the dwelling of said party of the second part, and for no other purposes.

And the said party of the second part does hereby hire the said premises as a tenant at will of said party of the first part, aforesaid, and does covenant and promise to pay to said party of the first part, its successors or assigns, therefor, the monthly rent of seventy-five cents, payable monthly, on the first secular day of each and every

month during the continuance of this lease; *Provided*, That in case any rent shall be due and unpaid, or if default shall be made in any of the covenants or agreements herein contained, then it shall be lawful for the said party of the first part, its successors or assigns, to re-enter into and repossess the said premises, and the said party of the second part and every other occupant to remove and put out. The house and any other improvements which may be now on said premises belong to said party of the second part; and this lease may be terminated and such house and improvements may be removed by him, his heirs, personal representatives or assigns at any time, upon payment of all rent that may then be due thereon, to said party of the first part, its successors or assigns.

423 It is further expressly agreed, that said party of the first part, its successors or assigns, shall at any time hereafter have the right to terminate this lease by giving said party of the second part one month's notice in writing, which notice may be served by posting the same on the door of said dwelling house or other conspicuous place on said premises in case the same are not then occupied by said party of the second part; or, if said premises are occupied, then by leaving said notice with any person of the age of discretion found occupying said premises; and thereupon on the expiration of one month after the service of such notice as aforesaid, this lease shall be wholly terminated, and said party of the first part, its successors or assigns, will be entitled to the immediate possession of said premises.

This agreement shall remain in force between the parties hereto until terminated, as aforesaid. The party of the first part, its successors or assigns, will not be liable for any improvements made, or to be made, by said party of the second part, his heirs, personal representatives, or assigns. In no case shall the term of this lease extend beyond October 1st, 1891.

Witness the hands of said parties the day and year first above written, in duplicate.

THE MANGANESE IRON MINING COMPANY,
By EDWARD BREITUNG, *President.*
his
JOSEPH x SMITH.
mark.
Attest: FRANK E. PEARSE.

Signed and delivered in presence of—
FRANK E. PEARSE.
F. E. PEARSE.

Witness continues:

The bundle of papers you show me are on the old form of lease, the leases from the Manganese Iron Company to various people on these lands. It shows on the back where they are lots in 47–26.

They are leases of some portion of these lands that were in Mr. Breitung and Mr. Kaufman's possession. There are 20 there now. Eighteen of these leases were given in 1881, one in 1882 and two in 1884.

424 The other bundle of papers you show me are leases on the new form from the Manganese Iron Company on their property up in Negaunee in 47–26; 3 in 1881; 5 in 1885; 2 in 1886; 1 in 1887 and 1 in 1890. The package of leases as to their date covers from 1881 to 1890. They cover substantially the same property testified to by Mr. Edgerton.

Mr. HOYT: That is objected to on the same ground.

Cross-examination by Mr. HOYT:

I live in Marquette. I have lived there since 1883. I was in the railroad business until about 5 years ago. Any shipping that was done by any company, I would be apt to know it. I couldn't say that the Negaunee Iron Company has shipped any ore during this time, because the only track I had of it was in collecting the money. I had nothing to do with the shipping part of it. I couldn't say whether the Negaunee Iron Company has done any mining or shipped iron ore.

I have worked for Mr. Breitung since 1895. These leases running back to 1881 were in the vault. I don't know anything about the Arctic Iron Company shipping or mining any iron ore since 1895, because I didn't have anything to do with the companies at all. If they had shipped any probably I should have known it. I don't know whether these leases were recorded or not, that I have been testifying to. They are just a package of old leases in the vault. I never had anything to do with them.

Re-direct examination by Mr. SHAULL:

I am in no way connected with the Negaunee Iron Company or the Arctic Iron Company. I have no duties to perform in re-

425 lation to these companies. I am not an employé of either of those companies. I was the cashier of the D. S. S. & A. Ry. Co. for a time and had to do with the collection of its moneys.

Mr. SHAULL: I now offer in evidence a certified copy of a mortgage from the Iron Cliffs Company to Edmund H. Miller and Abram S. Hewitt, trustees, dated September 10, 1874, and recorded in the office of the register of deeds of Marquette county on the 27th day of September, 1874, at 8:45 o'clock a. m. in Liber 6 of Mortgages, pages 63 to 76, inclusive.

Mr. HOYT: We object to it as incompetent and immaterial and not properly proved as I understand it. The record itself is the best evidence.

(Paper marked Exhibit D 2.)

A copy of said Exhibit D 2, excepting the description of lands therein, is as follows:

COMPLAINANT'S EXHIBIT D 2.

The Iron Cliffs Company
to
Edmund H. Miller and Abram S. Hewitt, trustees.

A true copy. Received for record the 22nd day of September, A. D. 1874, at 8.34 o'clock a. m.

F. M. MOORE, *Register.*

This indenture, made the tenth day of September, in the year of our Lord one thousand eight hundred and seventy-four, between the Iron Cliffs Company, a corporation of the State of Michigan, of the first part, and Edmund H. Miller, of the city, county, and State of New York, and Abram S. Hewitt, of Ringwood, Passaic county, in the State of New Jersey, of the second part.

Whereas, the said party of the first part was heretofore, to-wit, in the year of our Lord one thousand eight hundred and sixty-four, duly formed and organized as a body politic and corporate under a certain act of the legislature of the State of Michigan, entitled
426 "An act to authorize the formation of corporations for mining, smelting or manufacturing iron, copper, mineral coal, silver or other ores or minerals and for other manufacturing purposes, approved February 5, 1853, and all acts amendatory thereof or supplementary thereto.

And whereas, afterwards, the legislature of said State of Michigan passed a certain act entitled "An act to authorize the Iron Cliffs Company to acquire and hold certain lands and to acquire and hold stock in certain companies," which was approved by the governor of said State on the 26th day of March, 1867, whereby the said party of the first part was granted the power to acquire and hold the lands in the counties of Marquette and Washington, formerly held by the St. Mary's Canal & Mineral Land Company, within the said counties, in addition to such lands as the said party of the first part was then authorized by law to hold, and also to acquire and hold such lands as said company might deem necessary for the purpose of manufacturing charcoal iron not exceeding ten thousand acres for each furnace which said company should contract or operate, AND ALSO TO ACQUIRE AND HOLD STOCK IN ANY COMPANY FORMED FOR MANUFACTURING PIG IRON, WROUGHT IRON OR STEEL.

And whereas, under and pursuant to the power therein duly vested by the general laws of said State relating to mining and manufacturing companies and by the special act aforesaid, the said

party of the first part has become seized in fee simple of the several tracts of mining and other lands hereinafter particularly described with the rights, privileges and franchises appertaining thereto, and has also become the owner of certain stock in other companies hereinafter mentioned.

And whereas, under and by virtue of the laws of the said
427 State of Michigan, the said party of the first part is duly authorized to issue bonds payable at a future day and bearing interest at the rate of ten per centum per annum and to secure the payment of the principal and interest of such bonds by a deed of trust or mortgage upon the lands and property so held by said company, provided that the execution and delivery of such deed of trust or mortgage be expressly authorized by the vote of three-fifths in interest of the entire stock of said company actually present or legally represented at some meeting of the stockholders duly called and notified in accordance with the statute in such case made and provided.

And whereas, the stockholders of said company at a meeting duly called and notified for that purpose and this day held at their business office in the city of New York, have by a vote of more than three-fifths of the entire stock of said company, then and there present or legally represented, expressly authorized the execution of a deed of trust or mortgage upon the mining and other lands and property of said company for the purpose of securing the payment of certain bonds hereinafter more particularly described.

And whereas, the said party of the first part, acting by the board of directors and its stockholders concurring, have resolved to issue and offer for sale and negotiation, a certain series of bonds, that is to say, two hundred bonds of one thousand dollars each, numbered consecutively from 1 to 200, inclusively, and amounting in the aggregate to two hundred thousand dollars, payable within ten years from date and bearing interest at and after the rate of ten per centum per annum, payable semi-annually and to secure the payment of said bonds by these presents, and also to secure the payment of any further issue or issues of bonds bearing interest at the rate of
428 ten per centum per annum or any lesser rate which the board of directors of said company may hereafter in their discretion think proper to make for the purpose of retiring or renewing the present outstanding bonds of said company.

And whereas, the said series of two hundred bonds to be immediately issued as aforesaid are of like tenor and in the following form:

No. —. UNITED STATES OF AMERICA, *State of Michigan.* $1,000.

Iron Cliffs Company Third and Consolidated Mortgage Bond.

Know all men by these presents, that the Iron Cliffs Company, a corporation of the State of Michigan, is indebted to Edmund H. Miller, of the State of New York, and Abram S. Hewitt, of the State

of New Jersey, trustees, in the sum of one thousand dollars, lawful money of the United States of America, which the said Iron Cliffs Company hereby promises to pay to the said trustees or their assigns, on the tenth day of September, which will be in the year of our Lord one thousand eight hundred and eighty-four, at the office or agency of said company in the city of New York, and until the principal sum is paid the said company will pay interest thereon at and after the rate of ten per centum per annum semi-annually, namely, on the tenth days of March and September in each and every year at the said office or agency in the city of New York. And it is hereby expressly provided and declared that in case default shall be made in the payment of any half yearly instalment of interest on this bond or on any of the bonds of the series of which this bond is one, and such interest shall remain unpaid and in arrears for a period of sixty days after time of payment thereof, then the principal of this bond and of all the bonds of the same series may be made due and payable im-
429 mediately in the manner and subject to the conditions provided in the deed of trust or mortgage securing the payment of the same hereinafter mentioned. This bond is one of a series of two hundred bonds for a similar amount which are all of like date and the same tenor, numbered consecutively from 1 to 200, inclusively, and amounting in the aggregate to two hundred thousand dollars, the payment whereof is secured by a certain deed of trust or mortgage bearing even date herewith, duly executed and delivered by the said Iron Cliffs Company to the said Edmund H. Miller and Abram S. Hewitt as trustees and which conveys to the said trustees all and singular the mines, mining lands and other real estate of said company, with the exception of a small tract exempted for village lots, together with certain shares of stock in other companies, and all other property rights and franchises of said company. Subject, however, to a certain other mortgage, dated January 1, 1867, made by the said company to Lucian Tuckerman and Edmund H. Miller, trustees, to secure the payment of first mortgage bonds to the aggregate amount of two hundred thousand dollars, and a certain other mortgage, dated April 1, 1872, made by said company to the said Miller and Hewitt, trustees, to secure the payment of second mortgage bonds to the aggregate amount of one hundred thousand dollars. And it is expressly provided in the mortgage or deed of trust securing the payment of this bond that the board of directors of said company shall be authorized at any time hereafter in their discretion to make a further issue or issues of bonds for the purpose of retiring or renewing the bonds of said company now outstanding to an aggregate amount not exceeding three hundred thousand dollars, which new issue or issues shall bear interest at the rate of ten per centum per annum or such lesser rate as may be fixed by said
430 board and be payable at such time or times as the said board may determine and be secured equally with those

bonds and upon the same property *pro rata*. *Provided, always,* That for each and every new bond of the further issue or issues which may be made for the purpose of retiring or renewing existing bonds, an equal amount of the bonds now outstanding shall be retired and cancelled. This bond is transferable only on the books of the company in the city of New York by the registered holder in person or by attorney, but it may be at any time transferred to bearer by the registered holder and thereby created transferable by delivery. This bond shall not become valid or obligatory until the certificate authenticating the same which is endorsed hereon shall have been duly signed by the trustees under the aforesaid mortgage securing the payment thereof.

In witness whereof, the said company has caused its corporate seal to be hereto affixed, and these presents to be signed by its president and secretary, respectively, the tenth day of September, in the year of our Lord one thousand eight hundred and seventy-four.

—— ——, *Treasurer.*
—— ——, *President.*

And whereas, on or about the first day of January, in the year of our Lord one thousand eight hundred and sixty-seven, the said party of the first part in order to secure the payment of its certain bonds then or thereafter to be issued by the said company to an aggregate amount not exceeding two hundred thousand dollars, payable on the first day of January, A. D. 1874, and bearing interest at the rate of ten per centum per annum, duly executed and delivered to Lucias Tuckerman and Edmund H. Miller, of the city and State of New York, a certain deed of trust or mort-
431 gage in and by which the said company granted and conveyed to the said Tuckerman and Miller, the lands and premises hereinafter mentioned and described which were conveyed to the said company by Samuel J. Tilden by deed bearing date on the 29th day of May, A. D. 1865, and also all other lands which the said company should thereafter acquire for mining, smelting or manufacturing purposes of for the use of its furnaces for fuel or otherwise which said deed of trust was duly recorded in the office of the register of Marquette county, in said State of Michigan, on the 10th day of June, A. D. 1867, in Liber "T" of Mortgages, on pages 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24, as by reference thereto will more fully and at large appear.

And whereas, the said bonds whereof the payment is secured by said last mentioned instrument were duly issued to the full aggregate amount of two hundred thousand dollars and became due on the first day of January, A. D. 1874, but the payment thereof has been extended by agreement with the several holders thereof until the first day of January, 1881, and the said bonds are to be redeemed by a sinking fund which will cancel the whole issue by that date.

And whereas, on or about the first day of April, in the year of our Lord one thousand eight hundred and seventy two, the said

party of the first part duly executed and delivered to the parties of the second part hereto, a certain deed of trust or mortgage known as the second mortgage of said company whereby the said party of the first part granted and conveyed to the said parties of the second part all its mines, mining lands and other real estate, with the exception of a small tract reserved for village purposes and being the same hereinafter reserved for the same purposes in order to secure the payment of its certain other bonds then or there-
432 after to be issued by said company to the aggregate amount of one hundred thousand dollars, payable on the first day of April, 1882, and bearing interest at the rate of ten per centum per annum.

And whereas, the said second deed of trust or mortgage was duly recorded in the office of the register of the county of Marquette aforesaid, in Liber "4" of Mortgages, on pages 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82 and 83 on the sixteenth day of April, A. D. 1873, and all the bonds therein mentioned have been duly issued and remain unpaid.

Now, therefore, this indenture witnesseth, that the said party of the first part, being the said Iron Cliffs Company, in order to secure the payment of the principal and interest of the bonds hereinbefore described and recited, bearing even date herewith, and known as the third and consolidated mortgage bonds of the said company, and also for the purpose of securing the payment of any and all other bonds which may be hereafter issued in conformity with the power in that behalf reserved as hereinbefore stated for the purpose of retiring or renewing any bonds of said company now outstanding, and for and in consideration of the premises and of the sum of one dollar to it duly paid by the said parties of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, and by these presents doth grant, bargain, sell, convey and transfer to the said parties of the second part as joint tenants and not as tenants in common and to the survivor of them, his heirs and assigns, all and singular the several tracts, pieces or parcels of land situate, lying and being in the county of Marquette and State of Michigan, which are described as follows, to-wit:

433 All of the lands described in said mortgage are situated in Marquette county, Michigan, and comprising thirty-three thousand two hundred and seven and eighty-nine one-hundredths acres and ten pages of descriptions, and among those described in said instrument is the following:

Commencing at a point six chains and fifty links east of the center of said section 31, and running thence south thirteen and one-fourth degrees, east thirty chains and seventy-nine links to an established point ten chains north of township line between towns 47 and 48; thence running south twenty-six and one-half degrees east, twenty-five chains and eighty-two links; thence north thirteen and one-fourth degrees west, twenty-five chains and ninety-one links; thence

north thirty-six and one-fourth degrees east, five chains and ninety-two links to a point eleven chains and fifty-eight links east of the center of said section thirty-one; thence running along the center line of said section thirty-one five chains and eight links to the point of beginning and containing three and eighty-seven hundredths acres.

Together with all and singular the tenements, hereditaments and appurtenances to the said lands and premises and each and every part and parcel thereof belonging, and the reversion and reversions, remainder and remainders, incomes, revenues, rents, issues and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity of the said party of the first part of, in and to the same and every part thereof with the appurtenances. And this indenture further witnesseth that the said party of the first part has for the like consideration granted, bargained and sold and by these presents does grant, bargain, sell, assign, transfer and set over unto the said
434 parties of the second part and the survivor of them and their or his successors in trust, all the right, title and interest of the said party of the first part in, to and concerning the capital stock of the Pioneer Iron Company and the capital stock of the Excelsior Iron Company, both being corporations of the said State of Michigan.

Provided, nevertheless, that all of the lands and premises hereby conveyed are in equity subject to the lien and operation of two certain deeds of trust or mortgage hereinbefore mentioned, namely: The deed of trust or mortgage bearing date on the first day of January, in the year of our Lord one thousand eight hundred and sixty-seven, made by the said party of the first part to Lucius Tuckerman and Edmund H. Miller, trustees, to secure the payment of two hundred thousand dollars and interest as therein expressed, and the other deed of trust or mortgage made to the said party of the second part to these presents as trustees for the purpose of securing the payment of certain second mortgage bonds issued by the said company to the aggregate amount of one hundred thousand dollars.

To have and to hold unto the said party of the second part as joint tenants and not as tenants in common and unto the survivor of them, his heirs and assigns forever.

But in trust nevertheless for the uses and purposes hereinafter expressed. And the said party of the first part has granted and by these presents does covenant, grant and agree to and with the said parties of the second part in the manner following:

Article one. Makes provisions relative to the possession of the premises until default and as to the payment of taxes, before default.

Article two. Makes provisions relative to the default in the
435 payment of interest or the performance of covenants in said mortgage set forth or the payment of taxes or in the payment of the principal or interest of the bonds and in such event entitles the second party therein named to take possession of the premises

and work the mines and sell the ore, manage the business and make repairs, etc., and provides that the moneys accruing from the possession shall be applied during such default.

Article three. Provides that in case of default in payment of interest on said bonds or on the principal and after the entry by the trustees that it shall be lawful for them to sell the personal property and all the mortgagor's right, title and interest in the lands and mining and other lands covered by the instrument, and contains the following provision:

"Together with the shares of stock in the Pioneer Iron Company and the Excelsior Company aforesaid at public auction to the highest bidder at such sale made either in the city of New York or in the county of Marquette aforesaid as the trustees shall, in their discretion, think best, and at such time as they shall appoint," and specifies that public notice for six weeks in two papers in New York city or one paper in Marquette county shall be given thereof and authorizes the trustees to make good conveyances to the purchasers of such sale and provides for the distribution of the moneys arising from such sale without discrimination or preference between the bondholders, and for the return of the surplus to the mortgagor, and for the adjournment of the sale and the waiver of extension, stay and appraisal laws on the part of the mortgagor."

Article four. Provides that the trustees may bid at the sale and that the bonds and coupons shall be received as payment on such bid.

Article five. Provides among other things that in case of default of one of said bonds, all may be declared due by written declaration served on the mortgagor by the trustees or majority of the bondholders.

436 Article six. Provides among other things that in case of default in payment of interest or the principal when due, a certain portion of the bonds may require the trustees to proceed upon being indemnified.

Article seven. Reserves the surface of certain property for village purposes from the operation of the instrument.

Article eight. Provides that on payment of the moneys secured the lien should cease.

Article nine. Provides for a certain construction to be placed on the word "trustees" named in the instrument.

Provides for the compensation of the trustees and that they shall not be answerable for the fault of each other or of their agents or attorneys and may resign the trust by certain notice and for the appointment of new trustees to take the place of resigning trustees and for conveyance from the old to the new trustees, and that the court may appoint new trustees if the bondholders failed to do so, and provides for convening bondholders' meeting to act in such emergency and exempts trustees from personal liability for calling such meeting and prescribes the manner of voting.

And it is hereby declared and agreed That in case at any time here-

after any of the said trustees shall resign or be removed or become incapable or unfit to act in the said trust, the holders of the bonds secured hereby acting by a majority in interest shall be and they are hereby authorized and empowered by an instrument or instruments in writing under their respective hands and seals duly acknowledged as aforesaid or by a vote attested as aforesaid at a meeting of said bondholders duly convened to appoint his successor, and such successor when so appointed shall immediately upon
437 the acceptance of the trust become possessed with all the powers, authorities and estates held or possessed by the trustee to succeed whom he shall have been appointed, without any further assurance or conveyance, and thereupon all the powers and authorities hereunder and all the estate, right, title and interest in the said premises of such resigned or removed trustee shall wholly cease and determine; but nevertheless, the trustee resigning or being removed as aforesaid shall, upon the request in writing of the new trustee, execute and deliver to him all such conveyances and other instruments as shall be fit and expedient for the purpose of assuring to such new trustee the legal estate in the premises.

And it is hereby declared and agreed, That in case the bondholders shall fail or omit to appoint a new trustee in the manner aforesaid within ninety days after the resignation or removal of any trustee, application may be made by any holder or holders of said bonds to the aggregate amount of fifty thousand dollars in the name and on the behalf of all the holders of said bonds upon reasonable notice to the said party of the first part, its successors or assigns, to any court of competent jurisdiction for the appointment of a new trustee. *And it is hereby expressly declared and agreed* That whenever and as often as any contingency shall arise in which the action of a majority in interest of the holders of said bonds shall be necessary or in which the said bondholders are herein declared to have any discretionary voice or power the trustees hereunder shall be and they are hereby authorized and empowered to call a meeting of all the holders of bonds secured hereby to be held in the city of New York by advertisement (the expense whereof shall be a liability of the said party of the first part hereunder and may be defrayed, if necessary, from any trust funds) to be published three times in each week for six weeks in two newspapers of good
438 circulation amongst the business community of that city, and in default of such meeting being called by the said trustees within thirty days after notification in writing to it by any bondholder of the necessity therefor, it shall be competent for any holder or holders of said bonds to the aggregate amount of fifty thousand dollars to call said meeting in the manner aforesaid.

Provided always, that nothing hereinbefore contained shall be held to require or imply that the said trustees are to any personal liability in the calling or holding of such meeting, and that at any meeting called as aforesaid a majority in interest of the holders of said bonds may prescribe and establish such rules as they

may deem proper for the calling of future similar meetings and the regulation of the proceedings thereof.

And it is hereby declared and agreed That at any meeting so convened the holders of bonds shall be competent to exercise in person or by proxy all the powers and authorities conferred upon them by these presents.

Article tenth. And it is hereby further declared and agreed that the said party of the first part will take proper measures within a reasonable time to have the legal title to the mining and other lands in the county of Marquette aforesaid, now vested in the Excelsior Iron Company aforesaid, and in which the said party of the first part is beneficially interested as the owner of all the capital stock of that company transferred and conveyed to the said trustees under these presents, and in case the legal title to said lands can be obtained by surrender of the capital stock *nor* representing the same or otherwise, the trustees thereunder shall be authorized to release said stock and accept in substitution a proper deed or deeds of the lands themselves, which will in due form of law subject said
439 lands to the lien and operation of these presents in the same manner as the lands hereinbefore described and granted shall be subject thereto.

And this indenture further witnesseth that the said party of the first part, for the consideration aforesaid, has promised and agreed, and does hereby covenant, promise and agree to, and with the said party of the second part and its successors in the trust hereby created, that the said party of the first part, its successors and assigns, shall and will well and truly pay or cause to be paid unto the holder or holders of said bonds the principal and interest thereof as the same shall become payable according to the tenor of said bonds and the terms of the coupons thereto annexed and shall and will do, observe and perform any and every act and thing mentioned in or required by these presents to be by it or them done, observed and performed, and that the said party of the first part, its successors and assigns shall and will from time to time and at all times hereafter and as often as thereunto requested by the trustees under this indenture, execute, acknowledge and deliver all such further deeds, conveyances and assurances in the law for the better assuring unto the said parties of the second part and unto the survivor of them and their and his successors in said trust upon the trusts herein expressed, the mines, mining and other lands and property aforesaid with all appurtenances, and particularly any and all property whatsoever, except as hereinbefore specifically provided which shall or may at any time hereafter while the said bonds or any of them remain unpaid, be acquired by the said party of the first part, its successors or assigns, as by the said trustees or by counsel learned in the law shall be reasonably advised, devised or required.

In witness whereof the said party of the first part has caused its corporate seal to be hereunto affixed and these presents to be
440 signed in its behalf by its president and treasurer. And the said parties of the second part in order to evidence the ac-

ceptance of the trust hereby intended to be undertaken by them have hereunto set their respective hands and seals the day and year first above written.

Said mortgage is signed, witnessed and acknowledged in due form of law.

Complainants' counsel then offered in evidence a copy, duly certified by the secretary of state, under the great seal of the State of Michigan of the articles of re-organization of the Pioneer Iron Company, together with the record of the minutes of the stockholders' meeting, which purports to authorize their execution; such articles being dated Oct. 18, 1889; the Pioneer Iron Co. by C. J. Canda, president; the certificate of the secretary of state thereto attached, and the revenue stamps thereon duly cancelled; being made on the 13th day of January, 1900; signed by J. S. Stearn, secretary of state. The affidavit filed therewith and attached thereto made by Alexander Maitland and sworn and subscribed before Aubrey D. Garner, a notary public in and for the county of Marquette on the 28th day of March, 1900, was not offered.

Counsel for defendant thereupon objected to the introduction of the papers so certified in part, on the ground that all the papers contained in and referred to in the certificate must go in together, and that the affidavit of Mr. Maitland is a part of the papers, and must go in with the articles of reorganization.

Paper marked Complainant's Ex. E 2, and is as follows:

MICHIGAN, DEPARTMENT OF STATE, *Lansing.* } *ss:*

I, Justus S. Stearns, secretary of state of the State of Michigan, the officer who, under the constitution and laws of said State,
441 is duly constituted the keeper of the records of articles of incorporation of certain companies incorporated under the laws thereof, and the records of all papers relating to the creation of such incorporated companies, and empowered to authenticate exemplifications of the same, do hereby certify that the annexed instrument has been carefully compared by me with the original now in my official custody as secretary of state and found to be a true and correct exemplified copy of the

Articles of Association Reorganizing the "Pioneer Iron Company"

filed in this office on the eighth day of April, 1890, that said exemplification is in due form and made by me as the proper officer and is entitled to have full faith and credit given it in every court and office within the United States.

In testimony whereof I have hereunto attached my official signa-

ture and the great seal of the State of Michigan, at Lansing, this thirtieth day of January, in the year of our Lord nineteen hundred.

[Great Seal of the State of Michigan.]

J. S. STEARNS,
Secretary of State.

10c. rev. st'ps. J. S. S. 1-30-'00.

Know all men by these presents, that these are the articles of association of the Pioneer Iron Company, a corporation hereby organized under and pursuant to the provisions of an act of the legislature of the State of Michigan, entitled "An act to provide for the reorganization of corporations for mining, smelting and manufacturing iron, copper, silver, mineral, coal and other ores and minerals, the term of existence of which has heretofore expired, or may hereafter expire by limitation, and to fix the duties and liabilities of such renewed corporations." Approved June 8th, 1889, to succeed the Pioneer Iron Company, a corporation heretofore organized under the provisions of the act of the legislature of the State of Michi-
442 gan, approved February 5th, 1853, entitled "An act to authorize the formation of corporations for mining, smelting or manufacturing iron, copper, mineral, coal, silver or other ores or minerals, and for other manufacturing purposes, and an act supplementary to said last mentioned act, also passed by said legislature and approved February 6th, 1855, the term of existence of said last mentioned corporation having expired.

Article 1.

The purposes for which this reorganized corporation is formed are to hold and own all the property held and owned by the Pioneer Iron Company, whose term of existence has expired as aforesaid, and to be liable for all its debts and liabilities and obligations, and to carry on the business of mining and manufacturing iron ore and producing merchantable iron in the upper peninsula of Michigan.

Article 2.

The capital stock of said company shall be one hundred and twenty-five thousand dollars ($125,000), divided into five thousand shares of the par value of twenty-five dollars ($25.00) each.

Article 3.

There has been paid in on the capital stock aforesaid one hundred and twenty-five thousand dollars.

Article 4.

The names of the stockholders are as follows and their respective residences and the number of shares held by each is set after the name of each, to-wit:

	Residence.	No. of shares.
John H. Abeel	New York city	10
C. J. Canda	New York city	20
H. Goenemeyer	New York city	10
George M. Miller	Montmoor, N. Y	10
Alexander Maitland	Negaunee, Mich	10
Frederick Hudson	New York city	10
Abram S. Hewitt, surviving trustee	New York city	4930
Total		50,000 shares

443 Article 5.

The business office of this corporation is located in the city of New York, in the State of New York, and the office for the transaction of business within the State of Michigan is located at the city of Negaunee, in the county of Marquette.

Article 6.

The business of this corporation is to be carried on in the county of Marquette and the State of Michigan.

Article 7.

The number constituting the board of directors shall be seven.

Article 8.

The term of its existence shall be thirty years from and after the second day of April, A. D. 1887.

In witness whereof, the said Pioneer Iron Company whose term of existence has expired as aforesaid has in pursuance of a unanimous vote of all the stockholders of said company, at a meeting thereunto duly called and every share of said stock being represented and every share being in favor thereof, caused these presents to be executed in duplicate by its president and secretary thereunto duly authorized as aforesaid, this 18th day of October, A. D. 1889.

PIONEER IRON COMPANY,
By C. J. CANDA, *President.*

[CORPORATE SEAL.]
Attested by
H. GROENEMEYER, *Secretary.*

MINUTES of a special meeting of the Pioneer Iron Company held at Negaunee, Michigan, on the seventh day of October, 1889, at ten o'clock in the forenoon pursuant to a resolution of the board of directors of said Pioneer Iron Company and a notice, of which the following is a copy:

Pioneer Iron Company.

"To Mr. —— ——:

"You are hereby notified that a special meeting of the stockholders of the Pioneer Iron Company will be held at the office
444 of the resident director of said company, to-wit, the office of Alexander Maitland, at Negaunee, in the county of Marquette and State of Michigan, on Monday, the seventh day of October, A. D. 1889, at ten o'clock in the forenoon of that day, to consider and act upon the reorganization of the said Pioneer Iron Company under the provisions of an act of the legislature of the State of Michigan entitled "An act to provide for the reorganization of corporations for mining, smelting and manufacturing iron, copper, silver, mineral, coal and other ores and minerals, the term of existence of which has heretofore expired, or may hereafter expire, by limitation, and to fix the duties and liabilities of such renewed corporations." Approved June 8th, 1889. You are requested to be present at such meeting either in person or by proxy.

"By order of the board of directors of the Pioneer Iron Company.

"C. J. CANDA, *President.*

"H. GROENEMEYER, *Secretary.*

"September 13th, 1889."

There were present H. Groenemeyer, secretary, and owner of ten shares of stock, and Alexander Maitland, owner of ten shares; M. A. Gibbs, proxy for Abram S. Hewitt, surviving trustee, owner of 4,930 shares; A. B. Eldredge, proxy for Charles J. Canda, owner of twenty shares, and for Frederick Hudson, owner of ten shares. Proof of service of the above notice upon John H. Abeel, at the city of New York, upon H. Groenemeyer, at the city of New York, upon Abram S. Hewitt, at the city of New York, upon Frederick Hudson, at the city of New York, upon George H. Miller, at the city of New York, upon C. J. Canda, at the city of New York, all upon the 13th day of September, 1889, by their written acceptation of service of a copy of said notice endorsed thereon, and upon Alexander Maitland at the city of Negaunee, Michigan, on the 17th day of September, 1889, by his personal admission of service endorsed upon such duplicate, was presented by the secretary.

The said John H. Abeel, owner of ten shares, was repre-
445 sented by H. Groenemeyer, his proxy thereunto duly authorized by a power of attorney; C. J. Canda, owner of twenty shares, was represented by A. B. Eldredge, his proxy, being thereunto duly authorized by a power of attorney; George M. Miller was represented by Alexander Maitland, his proxy thereunto duly authorized by a power of attorney; Frederick Hudson, owner of ten shares, was represented by A. B. Eldredge, his proxy thereunto duly authorized by a power of attorney; Abram S. Hewitt, surviving trustee, owner of 4,930 shares, was represented by M. A. Gibbs, his

proxy thereunto duly authorized by a power of attorney. All the said powers of attorney were duplicates and were in form as follows:

"Know all men by these presents, that I, —— ——, do hereby constitute and appoint —— —— attorney and agent for me and in my name, place and stead, to vote as my proxy on any and all questions presented at the next meeting of the Pioneer Iron Company, to be held at the office of said company at Negaunee, Marquette county, Michigan, on the seventh day of October, 1889, or at any adjournment or adjournments thereof, according to the number of votes I should be entitled to vote if then personally present, with full power of substitution, including the question of reorganizing the said Pioneer Iron Company under the provisions of an act of the legislature of the State of Michigan, entitled "An act to provide for the reorganization of corporations for mining, smelting and manufacturing iron, copper, silver, mineral, coal and other ores or minerals, the terms of existence of which have heretofore expired, or may hereafter expire by limitation, and to fix the duties and liabilities of such renewed corporations." Approved June 8th, 1889.

"In witness whereof, I have hereunto set my hand and seal this — day of September, 1889.

—— ——.

Sealed and delivered "in the presence of"

—— ——.

And thereupon in the absence of the president it was moved by A. B. Eldredge and seconded by M. A. Gibbs, that Alexander Maitland be selected as chairman of this stockholders' meeting and
446 the question having been put by the secretary, said Alexander Maitland was unanimously chosen, and thereupon the object of the meeting having been stated by the chairman that the same was called in pursuance of a resolution of the board of directors of said Pioneer Iron Company it was ordered that the secretary report how many shares of the capital stock *was* represented at this meeting, and the secretary having examined the books reported that every share of stock, namely five thousand, was represented either in the person of the owner or by his proxy, and thereupon the following resolution was introduced by A. B. Eldredge, namely:

Whereas, the term of existence of this corporation has heretofore expired, and whereas by the provisions of an act of the legislature of the State of Michigan, entitled "An act to provide for the reorganization of corporations for mining, smelting and manufacturing iron, copper, silver, mineral, coal and other ores and minerals the term of existence of which has heretofore expired or may hereafter expire by limitation, and to fix the duties and liabilities of such renewed corporations." Approved June 8th, 1889. This corporation is authorized to direct the continuance of its corporate existence for a term not exceeding thirty years from the expiration of its former term.

Be it resolved, That the stockholders of the said Pioneer Iron Company hereby direct the continuance of its corporate existence for the period of thirty years from the expiration of its former term, and the president and secretary of this company are hereby authorized and directed to take such steps as may be necessary under said act of the legislature to procure the reorganization of this company," and thereupon the adoption of the said resolution having been moved by A. B. Eldredge and seconded by M. A. Gibbs, John H. Abeel, by his attorney H. Groenemeyer, whose proxy was duly filed with the secretary, voted ten shares in the affirmative; C. J. Canda, by his attorney, A. B. Eldridge, whose proxy was duly filed with the secretary, voted twenty shares in the affirmative; George M. Miller, by his attorney, Alexander Maitland, whose proxy was duly filed with the secretary, voted ten shares in the affirmative;
447 Frederick Hudson, by his attorney, A. B. Eldredge, whose proxy was duly filed with the secretary, voted ten shares in the affirmative; Abram S. Hewitt, by his attorney, M. A. Gibbs, whose proxy was duly filed with the secretary, voted forty-nine hundred and thirty shares in the affirmative; H. Groenemeyer voted ten shares in the affirmative, and Alexander Maitland voted ten shares in the affirmative, being five thousand shares, and thereupon every share of the capital stock of said company being represented at said meeting, and all voting in the affirmative, the chairman declared the resolution adopted.

There being no further business to come before the meeting, the same adjourned *sine die*.

H. GROENEMEYER, *Secretary*.

STATE OF NEW YORK, }
City and County of New York, } ss:

I, H. Groenemeyer, secretary of the Pioneer Iron Company, hereby certify that the foregoing is a full and correct copy of the proceedings of a stockholders' meeting of the said Pioneer Iron Company, held at the city of Negaunee in the State of Michigan on the 7th day of October, A. D. 1889.

H. GROENEMEYER,
[CORPORATE SEAL.] *Secretary Pioneer Iron Company.*

STATE OF NEW YORK, }
City and County of New York, } ss:

H. Groenemeyer, being duly sworn, deposes and says that he is the secretary of the Pioneer Iron Company and that the foregoing is a true, full and correct copy of the proceedings of a meeting of stockholders of said Pioneer Iron Company held at the city of Negaunee in the State of Michigan on the 7th day of October, A. D. 1889.

Subscribed and sworn to before me this 18th day of October, A. D. 1889.

[SEAL.] JOHN RANKIN,
Commissioner for Michigan, Residing in New York City,
11 *Pine Street, N. Y.*

448 Counsel for defendant thereupon offered in evidence the affidavit of Mr. Maitland contained within the same cover, and same certificate of the secretary of state, and referred to in the same certificate, and appearing to have been filed with them, as a part of the papers certified to by the secretary of state offered by complainants' counsel.

Counsel for complainants thereupon objected to such affidavit as irrelevant and immaterial, and not authorized by any law of Michigan to be filed as a part of the papers in connection with any proceedings of reorganization.

Paper marked Exhibit 25 and is the same affidavit appearing in this record as a part of Defendants' Exhibit 2-A.

Counsel for complainant- then offered in evidence the record of a deed from William Eyers and Anna, his wife, to Matt Neneimi, dated August 4, 1889, recorded August 17, 1889, in Liber 35 of Deeds, 158, being a warranty deed, consideration $220.00, for a parcel in section 6.

Counsel for defendants objected to such deed as incompetent and also irrelevant.

Counsel for complainants then offered the record of a deed from G. Blais to Christine Morisette, dated July 26, 1890, recorded July 26, 1890, in Liber 23 of Deeds, 159, being a warranty deed, with a consideration of $50.00, for a parcel in section 6.

(Same objection.)

Counsel for complainants then offered a deed from G. Blais to Augustine Biladeau, dated August 22, 1889, recorded December 4, 1890, in Liber 23 of Deeds, 316; warranty deed; consideration $225.00, of a parcel in sec. 6.

Counsel for complainants then offered the record of a warranty deed, consideration $925.00, from G. Blais and Zoe, his wife, to Samuel Mitchell and George Mitchell, dated March 30, 1887, recorded April 5, 1887, Liber 16, 147, covering a piece of land in sec. 6.

449 Counsel for complainants then offered the record of a deed from G. Blais to Samuel Mitchell and Geo. Mitchell, dated March 30, 1887, recorded April 3, 1887, Liber 14 of Deeds, 319, covering lands in sec. 6, and so called lots 8 and 9, and conveys those lots in the Harvey plat.

Counsel for complainants then offered the record of a deed from Zoe Blais to Samuel Mitchell and George Mitchell, dated March 30, 1887, recorded April 5, 1887, in Liber 16 of Deeds, 145, being a warranty deed, consideration $925.00, conveying certain lands in section 6.

(Same objection.)

Counsel for complainants then offered the record of a deed from Zoe Blais to Samuel Mitchell and Geo. Mitchell, dated March 20, 1887, recorded April 5, 1887, in Liber 16 of Deeds, page 146, being a warranty deed; consideration $925, and covering certain lands in section 6.

(Same objection.)

Counsel for complainants then offered the record of a deed from Fred Yerke and Emeline, his wife, to Adolph Laronix, dated April 19, 1888, recorded April 27, 1888, Liber 16 of Deeds, 495, being a warranty deed, with a consideration of $300.00 and covering certain lands in section 6, subject to mortgage.

(Same objection.)

Counsel for complainants then offered the record of a deed dated April 1, 1888, between Joseph Lloyd and Fred Yerke, recorded in Liber 16, 494, on the 27th of April, 1888, conveying a piece of land in section 6, for a consideration of $300.00.

(Same objection.)

The nine foregoing records were introduced by complainant to show the several conveyances of the lands covered by the so-called Harvey lease, and covered parts of sections 5 and 6 previously conveyed by Charles T. Harvey by warranty deed, as elsewhere shown.

450 Counsel for complainants then offered from the Mines and Mineral Statistics of the State of Michigan, by Charles D. Lawton, commissioner of mineral statistics, published in 1886, that part of pages 83 and 84 relating to the Pioneer mine.

Counsel for defendants thereupon objected to the testimony as incompetent, not properly proved, and also irrelevant.

Counsel for complainants then offered from the Mineral Statistics of the State of Michigan for the year 1887 that part of page 19 which relates to the Pioneer mine.

Counsel for defendants thereupon objected to such report as incompetent and irrelevant and no testimony.

Counsel for complainants then offered that portion of the same publication for the year 1888 on page 153, which relates to the same subject.

Mr. HAYDEN: We object to this class of testimony on the ground that these are statements made by men whom we have had no opportunity to cross-examine, and who gives no authority for his statements, and whose statements are at best but hearsay; and it never could be evidence of title, stated by anybody, even if there was any chance for cross-examination.

Counsel for complainants thereupon offered the annual report of the commissioner of mineral statistics of the State of Michigan for 1877 and 1878, and previous years, published by authority in 1879, so far as such reports relate to mines and mineral explorations upon the lands which have been testified to by Capt. Foley in sections 6, 7 and 8, for the purpose of showing the quantity of ore removed from them and the extent of the improvements upon them, and of

showing the publicity of the knowledge that it contains as to these deposits.

(Same objection continued.)

451 Counsel for complainants then offered such pages and parts of pages of the same reports in 1880 as relate to the same subject.

Counsel for complainants offered parts and portions of the same work relating to the same subject, published for the years 1880, 1881, 1882, 1883, 1884, 1885, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1895 and 1899.

Counsel for complainant- here stated that they would prepare so much of these reports as referred to the matter for which they are offered and file the same and furnish copy to defendants' solicitor to be used instead of the printed volume.

By the COURT: I understand that they will be used for the substitution of the books.

Mr. SHAULL: Yes.

Counsel for defendants thereupon made the same objection to all these reports.

Counsel for defendants thereupon offered, in connection with this same offer of the articles of reorganization of the Pioneer Iron Co., the certificate of the secretary of state, dated April 8, 1890, certifying that on the 8th day of April, 1890, articles of association and resolutions and affidavit thereto attached reorganizing the Pioneer Iron Co. were duly filed in the office of the secretary of state, agreeable to the provisions of the law.

STATE OF MICHIGAN, } ss:
Office of the Secretary of State, }

I, G. R. Osmun, secretary of state of the State of Michigan, do hereby certify that on the eighth day of April in the year one thousand eight hundred and ninety, articles of association and resolution and affidavit attached thereto reorganizing the "Pioneer Iron Company," were duly filed and recorded in this office, agreeable to the provisions of law.

In testimony whereof I have hereunto set my hand and
452 affixed the great seal of the State of Michigan at Lansing, this eighth day of April, in the year of our Lord one thousand eight hundred and ninety.

[SEAL.]

G. R. OSMUN,
Secretary of State.

S. W. SHAULL, recalled by complainants, further testified as follows:

Direct examination by Mr. ELDREDGE:

The notice dated January 12th, 1900, to the Pioneer Iron Co., Negaunee, Mich., signed by the Negaunee Iron Co., Edward N. Breitung and Mary Kaufman, by A. B. Eldredge, their attorney in fact, is a copy of a notice that was served on the Pioneer Iron Co. and was mailed by me in the postoffice at Marquette on the day it bears date.

Mr. ELDREDGE: We will offer it in evidence.

Mr. HOYT: We object to it on the ground that it is incompetent, irrelevant and immaterial, and also on the ground that no evidence is introduced showing that Mr. Eldredge is the attorney in fact of the Negaunee Iron Co., Mrs. Kaufman and Mr. Breitung.

Mr. HAYDEN: And it is also selfserving evidence.

Paper marked Exhibit F 2 and is as follows:

To the Pioneer Iron Company, Negaunee, Michigan.

GENTLEMEN: We are in receipt of a notice dated Jan. 9, 1900, signed by the Pioneer Iron Company, by M. M. Duncan, agent, stating that the Pioneer Iron Company has entered upon the east half of the southwest quarter and the south half of the southeast quarter of section 6, the north half of the northeast quarter of section 7, and the northwest quarter of the northwest quarter of section 8, in township 47, north of range 26 west, for the purpose of exploring for iron ore to be used in the furnaces of your company, under a certain lease executed by Charles T. Harvey on the 17th day of September, A. D. 1857.

We beg to advise you that we deny that the Pioneer
453 Iron Company has any rights whatever in any of the lands described in your notice or in the said lease, by virtue of the said lease, or in any other way. We have already notified you at both Cleveland and Negaunee to this effect. We forbid your exploring upon the said lands; demand that you remove from the same, if you have already entered as you state, and give you notice that if you do not do so we shall resort to the courts for relief from your unwarranted trespasses upon our lands.

Marquette, Mich., Jan. 12, 1900.

NEGAUNEE IRON COMPANY,
EDWARD N. BREITUNG,
MARY KAUFMAN,
By A. B. ELDREDGE,
Their Attorney in Fact.

Said notice was thereupon offered in evidence, marked Complainants' Exhibit H 2, and is as follows:

See note opposite page.

To the Pioneer Iron Company, Negaunee, Mich.

GENTLEMEN: We are advised by articles in the public press that you have or are about to enter upon the lands owned by us in sections 6, 7 and 8 of township 47 north of range 26 west, for the purpose of mining iron ore under a certain alleged lease for ninety-nine years.

We desire to notify you that we deny the validity of such lease, and the right of the Pioneer Iron Company, or any one else, to enter upon the said lands and remove iron ore therefrom. We give you this notice that there may be no question of our position in the matter, and advise you that, if you persist in trespassing upon our lands, we shall be obliged to seek recourse in the courts.

Marquette, Mich., Jan. 9, 1900.

NEGAUNEE IRON COMPANY,
By N. M. KAUFMAN, *Sec'y.*
EDWARD N. BREITUNG,
By A. B. ELDREDGE,
His Attorney in Fact.
MARY KAUFMAN,
By A. B. ELDREDGE,
Her Attorney in Fact.

The notice dated January 9, 1900, signed by the Negaunee
454 Iron Co. by N. M. Kaufman, secretary, Edward N. Breitung and Mary Kaufman, by A. B. Eldredge, their attorney in fact, is a notice that was mailed by me in the postoffice in Marquette, stamped and properly addressed to the Pioneer Iron Co., Negaunee, Mich. This is a true copy of the notice sent.

NOTE.—Ex. H 2 opposite belongs here.

Mr. HOYT: The same objection.

COURT:

Q. When did you serve the notice to produce on Mr. Hayden you said yesterday, at what hour?

A. I believe it was about the hour of 5:15 p. m.; that is the best of my recollection.

The letter dated January 15, 1901, signed by the Negaunee Iron Co., Edward N. Breitung and Mary Kaufman, by S. W. Shaull, their attorney in fact, addressed to M. M. Duncan, Esq., Ishpeming, Mich., is a notice dictated by myself and signed on the day it bears date addressed to M. M. Duncan, Esq., Ishpeming, Mich., postage prepaid. It was sent by registered letter on the day it bears date. That is a true copy of the notice.

Mr. ELDREDGE: I offer this in evidence.

Mr. HOYT: The same objection continued.

Paper marked Exhibit G 2 and reads as follows:

MARQUETTE, MICH., U. S. A., *Jan. 15th*, 1901.
Mailed 5 p. m.

M. M. Duncan, Esq., Ishpeming, Mich.

SIR: We are in receipt of a letter from you under date of January 12th, 1901, wherein you style yourself the Pioneer Iron Company, by M. M. Duncan, agent, and wherein you say: "That in addition to the other lands occupied by us under the terms of a certain lease, of which you have heretofore had notice, we are also occupying under such lease the southwest quarter of section 8 and the south half of section 7, all in township 47 north of range 26 west."

You will please TAKE NOTICE that you have no rights whatever upon said lands and no excuse whatever for entering thereon and you are hereby warned to desist from your unwarrantable trespasses thereon and you and your associates, whoever they may be, are
455 warned to immediately vacate and remove yourselves therefrom. We FORBID your exploring upon said lands, and warn you, as we have heretofore warned you, that any money which you may expend thereon will be at your peril and we give you notice that if you do not, in case you have as you say entered thereon, immediately remove therefrom, we shall resort to the courts for relief from your unwarrantable trespasses upon our lands.

Yours truly,
NEGAUNEE IRON COMPANY,
EDWARD N. BREITUNG, AND
MARY KAUFMAN,
By S. W. SHAULL,
Their Attorney in Fact.

The letter addressed to the Pioneer Iron Co., dated January 18, 1900, signed by the Negaunee Iron Co. and Mary Kaufman, by A. B. Eldredge, attorney in fact, and signed Edward N. Breitung addressed to the Pioneer Iron Co., Negaunee, Mich., was mailed by me to the Pioneer Iron Co., Negaunee, Mich., properly addressed and postage prepaid, upon the day it bears date, and this is a true copy of the notice sent.

Mr. ELDREDGE: I offer it in evidence.
Mr. HOYT: Same objection continued.
Paper marked Exhibit 12 and reads as follows:

MARQUETTE, MICH., U. S. A., *Jan'y 18th*, 1900.

Pioneer Iron Company, Negaunee, Mich.

GENTLEMEN: We received yesterday a notice signed Pioneer Iron Company, M. M. Duncan, agent, the same being dated January 15th, 1900, in which we are informed that the Pioneer Iron Company has entered on the southeast quarter of the northwest quarter and the south half of the northwest quarter of section 8, town 47 north of range 26 west, for the purpose of exploring for iron ore to be used in the furnace of the Pioneer Iron Company in Marquette county under a lease executed by Charles T. Harvey under date of Sep-

tember 17th, 1857, you are hereby notified that said lease has no validity or force whatever.

456 We have already warned you that the Pioneer Iron Company has no rights whatever in or to the lands owned by us in sections 6, 7 and 8 in the township and range above mentioned, either by virtue of said lease or in any other way and to desist from its unwarranted trespasses upon our said lands, which warning we now repeat, and notify you that you are acting at your own peril in this matter and must take the consequence of your acts. We object to your spending any money on said lands or any part thereof, and warn you that we must resort to the courts for relief from your acts in relation to said lands if you persist in such *unwarned* trespasses.

THE NEGAUNEE IRON COMPANY,
By A. B. ELDREDGE, *Its Attorney in Fact.*
MARY KAUFMAN,
By A. B. ELDREDGE, *Her Attorney in Fact.*
EDWARD N. BREITUNG.

Counsel for complainants then offered in evidence that part of the legislative proceedings of the session of 1889, as found in the Senate Journal, pages 197, 288, 340, 353, 367, 378 and 400, pertaining to the introduction and passage of senate joint resolution number 11, proposing an amendment to the constitution of the State pertaining to the reorganization of corporations.

Also that part of House Journal of the session of 1889 found on pages 596, 630, 631, 632, 658, 666, 668, 669, 755, 756, 764 and 770, pertaining to the same joint resolution and substitute therefor, and to that subject.

Senate.

February 14th, 1889.

Introduction of bills.

Mr. Dunstan, previous notice having been given and leave being granted, introduced,

Senate joint resolution No. 11, entitled,

Joint resolution proposing the repeal of section 10 of article 15 of the constitution relative to the duration of corporation-.

457 The joint resolution was read a first and second time by its title and referred to the committee on constitutional amendments.

February 20th.

Reports of committees.

Report by above named committee that they had had the same under consideration and reported the same back to the senate with an accompanying substitute therefor, entitled,

"Joint resolution proposing an amendment to section 10 of article 15 of the constitution of this State relative to the duration of corporations, and

Recommended that the substitute be concurred in and that the substitute do pass, etc.

Report accepted.

On motion of Mr. Dunstan,

The senate concurred in the adoption of the substitute and the joint resolution was ordered printed, referred to the committee of the whole and placed on the general order.

On motion of Mr. Dunstan,

The rules were suspended, two-thirds of the senators present voting therefor, and the joint resolution was placed on its immediate passage.

The joint resolution was then read a third time and passed, two-thirds of all the senators elect voting therefor by yeas and nays as follows: Yeas 23, nays none.

(Journal contains names of senators voting.)

Title agreed to and by a vote of two-thirds of all the senators elect the joint resolution was ordered to take immediate effect.

(Here follows a copy of the joint resolution in full, providing for the submission of the same to the people at the next spring
458 election to take place on the first Monday in April, A. D. 1889, and that the secretary of state give notice of the same to the sheriffs of the several counties at least 20 days prior to said election, and that the sheriffs give the several notices required by law, and providing the form of the ballot to be used on such submission.)

House.

February 25th.

Messages from the senate.

Messages from the senate reporting the passage of the resolution by a vote of two-thirds of all the senators elect, and that the same had, by a like vote, been ordered to take immediate effect and asking the concurrence of the house therein.

The joint resolution was read first and second time by its title and referred to the committee on judiciary.

Reports of standing committees.

Report by judiciary committee that they had had the same under consideration and report it back to the house with an accompanying substitute therefor, recommending that the substitute be concurred in, and that the substitute do pass, etc.

Report accepted and committee discharged.

The substitute joint resolution was read a first and second time by its title and on motion,

The house concurred in the adoption of the substitute reported by the committee and

The rules were suspended, two-thirds of all the members present voting therefor, and the joint resolution was put upon its immediate passage.

The substitute joint resolution was then read a third time and passed, two-thirds of all the members elect voting therefor by yeas and nays as follows: Yeas 84, nays 5.

(Journal contains names of all members voting for and against resolution.)

459 Title and preamble agreed to.

On motion, and by vote of two-thirds of all the members elect, the joint resolution was ordered to take immediate effect. (The journal here contains a copy in full of the house substitute joint resolution.)

Senate.

February 27th.

Messages from the house.

Message from the house reporting the substitute joint resolution as having passed by a vote of two-thirds of all the members elect, and that by a like vote the same had been ordered to take immediate effect, and asking the concurrence of the senate therein.

The substitute was read a first and second time by its title and referred to the committee on constitutional amendments.

House.

March 1st.

On motion the house adopted a resolution asking the senate to return the joint resolution for further consideration.

Senate.

Messages from the house.

On motion, the committee on constitutional amendments was discharged from the further consideration of the joint resolution and the same ordered returned to the house.

House.

Report received from the secretary of the senate returning the joint resolution to the house for its further consideration.

460 On motion, the house, by a vote of two-thirds of the members present, suspended the rule limiting the time in which a motion to reconsider a vote might be made, and by a like vote determined to reconsider the vote by which the joint resolution passed.

The joint resolution being then placed upon its passage was, upon motion, referred to the committee on judiciary.

Afternoon session.

On motion the judiciary committee was discharged from the further consideration of the joint resolution and the same was amended and placed upon its immediate passage.

The amendment was adopted by a vote of two-thirds of all the members elect, and by a like vote the joint resolution was passed by yeas and nays as follows: Yeas 76, nays none.

(Such vote entered at large upon the journal containing the names of the members voting therefor.)

Title agreed to.

By a vote of two-thirds of all the members elect the joint resolution was given *immediate effect*.

(The journal contains a copy of the complete joint resolution as passed by the house.)

Senate.

Messages from the house.

Message from the house reporting the passage of the house substitute resolution by a vote of two-thirds of all the members elect and that by a like vote the same was ordered to take immediate effect, and asking the concurrence of the senate therein.

The joint resolution was read a first and second time by its title and on motion of Mr. Dunstan,

461 The joint resolution was laid upon the table.

March 5th.

On motion of Mr. Dunstan the joint resolution was taken from the table and, the rules being suspended by a vote of two-thirds of all the members elect, the joint resolution was placed upon its immediate passage.

The joint resolution was then read a third time and not passed, two-thirds of all the members elect not voting therefor by yeas and nays, as follows: Yeas 21, nays 6.

Mr. Dunstan moved to reconsider the vote by which the senate refused to pass the joint resolution, which motion prevailed.

The question being on the passage of the joint resolution on motion of Mr. Dunstan the joint resolution was laid on the table.

By unanimous consent, Mr. Fox moved to take from the table house substitute for senate joint resolution No. 11, entitled, etc.

Which motion prevailed.

The joint resolution having been read a third time, and the question being upon its passage, on motion of Mr. Dunstan the joint resolution was laid upon the table.

March 6th.

Mr. Dunstan, by unanimous consent, moved to take from the table the joint resolution, entitled, etc.

Which motion prevailed.

The joint resolution, having been read a third time and the question being upon its passage, Mr. Gorman moved an amendment, which amendment did not prevail.

The joint resolution was then passed, two-thirds of all the senators voting therefor by yeas and nays as follows: Yeas 28, nays 2.

(Vote of each member for and against the joint resolution fully recorded in the journal.)

462 Title agreed to.

On motion of Mr. Dunstan, and by a vote of two-thirds of all the senators elect, the joint resolution was ordered to take immediate effect.

(The full text of the joint resolution was duly spread on the journal.)

House.

March 6th.

Messages from the senate.

Message from the senate reporting the passage of the house substitute for senate joint resolution No. 11, entered, etc.

"In the passage of which substitute the senate has concurred by a vote of two-thirds of all the senators elect, and by a vote of two-thirds of all the senators elect, has ordered the same to take immediate effect."

The joint resolution was referred to the committee on engrossment and enrollment for enrollment.

March 7th.

Reports of standing committees.

The committee on engrossment and enrollment report as correctly enrolled, signed and presented to the governor the following:

House substitute for senate joint resolution No. 11, entitled,

Joint resolution proposing an amendment to section 10 of article 15 of the constitution of this State relative to the duration of corporations.

Report accepted.

Messages from the governor.

Message from the governor saying,

"I have this day approved, signed and deposited in the
463 office of the secretary of state, house substitute for senate joint resolution No. 11, being,

"An act providing an amendment to section 10 of article 15 of the constitution of this State, relative to the duration of corporations.

"C. G. LUCE, *Governor.*"

The message was laid on the table.

Counsel for complainants then offered in evidence the report of the commissioner of mineral statistics for the year 1885, pages 148 and 149, the report about the Pioneer furnace, to whom the furnace belonged, and reads as follows:

By consent an abstract of the publication in lieu of the entire matter in the several volumes of mineral statistics follows, the matter contained in said published volumes and abstract being incorporated in this case against the objection of defendants' counsel as irrelevant and as hearsay.

Abstract of statements appearing in the several volumes published by the commissioner of mineral statistics for Michigan, introduced by complainants under objection by defendants as irrelevant and incompetent.

1877 and 1878 and previous years.

Historical Sketch.

P. 27. The Pioneer furnace was the first built on Lake Superior; constructed near the Jackson mine, 13 miles from Marquette, and completed so as to make iron in July, 1858. The Pioneer Iron Co., by whom the furnace was built, became subsequently merged into the Iron Cliffs Co.

P. 28. The city of Negaunee began its existence with the discovery and development of the Jackson mine. And among the important industries which contribute largely to its business are the Pioneer furnaces.

464

Iron mines.

P. 73. The McCOMBER MINE located on the northwest quarter of the northwest quarter of section 7, T. 47, R. 26.

Adjoining the McComber on the east is the NEGAUNEE MINE.

P. 76. It was worked in 1871 and 1872 and then lay idle until the present year. The ore is manganiferous soft hematite, and very similar to that of the McComber mine. The shipments have been as follows:

Year.	Gross tons.
1871	4,787
1872	9,154
Total	13,941

Immediately north of the Negaunee mine is the

Grand Central Iron Company's mine.

P. 76. It was first worked in 1870 under a sublease from Hon. Ed. Breitung, by S. S. Burt and J. S. Waterman. In 1873 they forfeited their lease and in 1875 it was again subleased to M. T. Gaffney, Esq., Negaunee. The ore, when properly selected, is a fine quality of "soft hematite" and brown iron ore.

The following are the shipments:

Year.	Gross tons.
1870	1,809
1871	2,921
1872	9,925
1873	6,629
1875	750
1876	456
1877	3,307
Total	25,797

465 Only a few steps south of the Rolling Mill mine are the workings of the

Himrod Hematite Company.

P. 77. After shipping 2,065 tons of ore in 1873, the company ceased mining operations. The ore is similar to that of the adjacent Rolling Mill mine, but does not average well in quality. Adjoining the Rolling Mill mine on the east are the mine workings of the Green Bay Iron Company. The following comprise their total shipments:

Year.	Gross tons.
1872	7,633
1873	1,949
Total	9,582

Contiguous to the Green Bay Iron Company on the east is the

Allen mine.

P. 78. Which has made the following shipments:

Year.	Gross tons.
1872	8,707
1868	510
1869	130
Total	9,347

1879.

Marquette districts.

P. 24. The better class of these ores command now (January 1st, 1880) from $4.00 to $5.00 per gross ton on the cars at the mine.

466 The average cost of mining the soft hematites of the Negaunee range in the beginning is about one-half that of mining the hard ores, or say from 50 cents to $1.50 per ton.

With these many advantages in favor of the soft hematite deposits, it is not surprising that they are receiving more attention just now than the undeveloped hard ore deposits.

Nearly one mile due south of the Pioneer furnaces are the workings of the

Milwaukee mine.

P. 24. This mine was opened early this season by Messrs. Adams and Foley of Negaunee. Their lease embraces the north half of the southwest quarter and the southeast quarter of the northwest quarter of section 7, T. 47, R. 26. The workings are near the center of the last described forty. They have sunk two shafts and have done some open trenching and drifting. No. 1 shaft is sunk on the dip of the vein, and is 90 feet from the surface. From the bottom of the shaft two drifts have been driven in the bed of ore, the one to the southeasterly is 65 feet and the other, northwesterly, is 50 feet long. To the southeast on this lower level they are stoping away in the back of the drift. The vein of ore averages from 10 to 14 feet in thickness. This ore is a soft hematite, and when carefully assorted will average well in metallic iron. On the foot and hanging wall sides is a chlor-tic schist. A small hoisting engine operates the skid bucket in the shaft.

Two hundred and twenty feet southeasterly from No. 1 shaft is No. 2. This shaft is sunk vertically and is down 35 feet below the surface. From the bottom of this shaft they drifted to the south and within a few feet struck a fine grade of soft hematite ore which they are now diagonally cross-cutting.

A little more than one-half a mile east of the Milwaukee
467 mine Messrs. Morgan, Kieren & Weise have done considerable exploring the past season. They are located on the north half of the southeast quarter of section 7, or what was formerly known as the Himrod Hematite Co. They have done some work in the old pit of the former company and on the northeast portion of the northeast quarter of the southeast quarter have sunk three test pits or shafts, finding some very good hard hematite ore. The extent of the deposit has not been determined. The latter workings are known as the

Orion mine.

P. 25. The next new developments that demand attention are those made by the Manganese Iron Co. near the center of the west half of the northwest quarter of the northeast quarter of same section as the Milwaukee and Orion mines. This company has just begun (January 1st) stripping off the earth from what appears to be a large deposit of soft hematite ore.

On the old Green Bay mine property Messrs. Edward Blake & Co. have partially developed some new "finds" of a fine looking soft hematite ore. These new openings I understand will be known the coming season as the

Indiana mine.

P. 25. The property formerly known as the Spurr and Calhoun has been leased by J. F. Stevens, Esq., who has cleaned out one of the old openings and has now a fair quality of soft hematite ore. He has christened it the

Chicago mine.

P. 25. The product is estimated from 10,000 to 15,000 tons.

1880.

Pp. 172, 173 and 174.

468 Negaunee range.

P. 172.

The Milwaukee mine.

The mine attracting the most attention at present is the Milwaukee, located on the southeast quarter of the southwest quarter of section 7. The leasehold was owned by Messrs. J. Q. Adams and James F. Foley, who recently sold their interest to the company now operating the mine.

The officers of the Milwaukee Iron Company are: President and treasurer, R. S. Fay, Esq., A. Kidder, agent; James F. Foley, Esq., superintendent.

This mine, though less than 2 years has transpired since ore was first discovered on the property, bids fair to take the lead of the soft hematite mines of the Marquette iron district. A great change has been wrought within the past year.

The ore in shaft No. 1 at present (March 26) appears to be the bottom portion of a lens. It is 110 feet long and 95 feet deep, and nearly pinches out at the ends and in the bottom. Captain Foley describes it as resembling a birch bark canoe with the sides almost squeezed together. It was 23 feet wide at its strongest point. At No. 2 shaft we have an open pit 80 feet long, east and west, and 70 feet wide by 80 feet deep. On the west of the pit is a stope of soft blue and gray ore 40 feet wide and 60 feet high. To the east side of the ore is 30 feet wide and 30 feet high from the bottom of the pit. Near the center of the east half of the pit a winze has been sunk 29 feet deep, but within a very short distance the winze came upon chloritic schist, which continued all the way down. From the buttom of the winze a drift is driven 45 feet to the north in chloritic schist; another to south 35 feet; the first 8 feet was in chloritic schist, but the remainder of the distance was in mixed ore and jasper. The east half of the bottom
469 of the pit is ore. From the bottom of the pit a drift has been driven 115 feet to the west, which was all in ore, except one short run of chloritic schist. Thirty feet above this point another drift was driven 65 feet to west, which was also in ore. From this

it appears probable that the lens of ore in No. 2 laps on to the south side of No. 1 deposit. A branch from the M. H. & O. R. R. extends past Nos. 1 and 2 ore pockets. The skips at these shafts are at present operated by two of Merritts' internal geer 30-inch drums. Six hundred feet to the north and 100 feet to the east of No. 2 shaft is the No. 3 or Ryan's pit. Ore was discovered here last summer. The Ryan pit is located on the south slope of a side hill, while Nos. 1 and 2 shafts are near the base of the north slope of that side of the valley. The bottom of the Ryan pit is 25 feet above the M. H. & O. R. R. track. A tram road now connects the pit with the ore docks and pockets alongside of railroad track.

Passing now along the tram road we enter the Ryan pit through an open cut. The first that attracts attention to either side of the cut is a ledge of massive diorite, and then comes on the north side of the diorite a soft blue ore resembling the Vulcan of the Menominee range. An analysis of several samples of this ore, collected by Mr. A. Kidder, as an average, afforded as follows:

Metallic iron	61.090
Phosphorus	.098
Silica	5.200

To the west of the entrance is a shaft 30 feet deep. The first 25 feet of the shaft was in ore, but the remaining 5 feet was in rock. A portion of this ore was hard, velvety textured specular or hard hematite. This ore is very rich, as may be seen by the following analyses made by myself:

Metallic iron	68.14	68.90
Phosphorus	.07	.05
Silica	1.10	.67

470 From this point to the north side of the pit is over 100 feet. The strike of the formation is S. 80 deg. W., and the dip is 45 deg. to the south. On the south side of the open pit the gradual rise of the hill gives a stope of ore at the northwest corner of over 25 feet high. The breast of ore at this part of the pit is about 30 feet wide; south of this point for some distance the west side presents a face of lean ore and decomposed chloritic schist. But only 12 feet west of the upper edge of the pit and inside of its rocky face ore appears on the surface of the ledge and a drill hole at this point 14 feet deep is all in ore. The face of the east side of the pit contains more rock and lean ore than the west side. The earth is stripped from the ledge for 25 feet south of the upper edge of the pit, and shows a large percentage of ore all the way across.

Two hundred and fifty feet northwesterly from the Ryan is No. 4 pit or cut. The present level of this cut is 30 feet above the main railroad track, or 15 feet above the bottom of the Ryan pit. The present work in this cut is chiefly confined to removing the earth

from the ledge. Tram cars are used to transport the dirt to the dump.

No. 5 cut is 230 feet southwest of No. 4. It is 20 to 25 feet above the main track. The cut has just struck the south edge of the ore. About 50 feet southeasterly from where ore was found in No. 5 a test pit was sunk and bottomed on diorite. This diorite is the same as that already noted at the entrance of the Ryan pit. The diorite has also been found in another test pit midway between these points. To the west of No. 5, but on a higher level, and to the east between No. 5 and 4 cuts and between No. 4 and the Ryan pit, are three other cuts used for stripping the earth from the ledge. Besides these pits and side hill cuts numerous test pits have been sunk which partly proves the ore bearing belt to be from 150 to 200 feet
471 in width and more than 500 feet in length. The present outlook of the new find is certainly good, and the ore, after the earth is removed, can be mined very cheaply.

The Chicago mine,

P. 174.

so-called, is situated in the southeast corner of section 7. The lease held by Mr. J. F. Stevens and W. C. Calhoun, the proprietors of the mine, covers the south half of the southeast quarter of that section. The work now in progress is being prosecuted in the bottom of an open cut at a depth below the surface of about 80 feet. This pit has a vein of soft brown ore of the color and apparent texture of rotten stone, greatly mixed with jasper so that the ore has to be picked out piece by piece. In this manner several thousand tons have been selected of ore of a medium quality.

In the bottom of the pit at the southeast corner has appeared a vein of a much softer ore and of better quality. The owners are naturally anxious that this small beginning shall develop into a deposit of magnitude.

A small engine does the work of hoisting and pumping. Thirty men are employed.

The New York Hematite.

P. 201.

The New York Hematite is another name for what was formerly called the Grand Central mine. The company have worked an open pit a short distance east from the Old Grand Central mine. This pit has a direction of northeast and northwest, 80 feet in length on its bottom and 20 feet wide; the depth is about 60 feet. The bottom is partly in ore, and a drift to the south 25 feet is in ore: also one of same length to the southeast showed very well in ore.
472 These drifts are in the bottom level. In the bottom they are winzing for a stope. Two skip-tracks go down into the pit from the east side, operated with wire rope from the engine house, standing 150 feet to the east. This mine is in the southeast quarter of the southwest quarter of section 7. Another similar pit to the

east is temporarily idle, through failure of machinery, partly, and partly through the unsatisfactory condition of the deposit.

The company, or J. Q. Adams and James Foley, the holders of the lease, are exploring on the next "forty" to the east with such success that the claim is made that they found the eastern continuation of the Jackson hard ore vein. They have put down three drill holes with the Akron churn drill to the ledge, and think that they have the vein 75 feet wide, and have also gone east and west on it 190 feet. The ledge is covered with 16 to 18 feet of drift. The drill hole cleanings certainly showed very fine, hard ore. A shaft has been begun and is down on the ledge, showing mixed ore on top. If it proves to be a really fine, hard ore deposit, it will be an important fact. Much search has been from time to time made for the Jackson ore to the east of that mine, but has never been found, unless, indeed, this discovery proves to be it. The further outcome excites some interest at Negaunee.

The Manganese Mining Company.

P. 201.

The Manganese Mining Company holds three forty-acre lots in section 7, lying east from the McComber and between the Milwaukee, the rolling mill on the south, and the New York Hematite on the north. Mr. J. W. Schadt of Negaunee, who controls the lease of the land, has given "options" in the east and middle forties.

473 Some men are at work under Capt. Roberts opening a pit and sinking a shaft on the west forty, but, as yet, have not enough ore in sight to assure them of having a mine.

The middle forty, joining the rolling mill mine, is being explored by Mr. Foley for Mr. James H. Dalliba, of Cleveland, O., who has an option for the lease of the land, the consideration being, it is said, $25,000. A shaft, 25 feet in depth, has been sunk to the ledge and 40 feet of drift made across it; 28 feet of the drift is declared to be in ore.

The Chicago mine.

P. 201.

The Chicago mine is the southeast forty of section 7. The mine has been opened but little over a year and shipped last season 5,531 tons of ore, and now has about 2,000 tons in stockpiles. The workings have extended underground, but were so filled with water at the time of my visit to the mine (June 3) that I was unable to go down into the mine. It was represented by the men in charge to be lookin well, and that mining work would be resumed as soon as the pumps were repaired and the mine freed of water. The mine is provided with a hoisting engine and drums, etc., and has a large ore pocket standing above the railroad track.

The Star mine.

P. 202.

The Star mine lies east of the Chicago and the rolling mill mines in section 8. It is in the cedar swamp, between the bluffs.

It is a new enterprise undertaken by Mr. J. B. Maas, of Negaunee, in the summer of 1881. Several shafts have been sunk, one to the depth of 60 feet, and considerable drifting has been done, enough to determine the existence of a body of hematite of some magnitude. It is but a short distance to the mineral branch of the Chicago & Northwestern railroad.

474 A force of 22 men, under Capt. John Bartle, are now at work to open a mine, no easy task in this low ground.

The Bay State mine.

P. 202.

The Bay State mine is the name under which is known what was formerly called the Green Bay, and latterly the Indiana mine, and is controlled by Messrs. Allen & Blake, of Negaunee.

Considerable mining has been done on this location, but not much good ore obtained. The ore that was shipped in 1872, 1873, etc., was of a very low grade; a jasper hematite that could not now be sold at any price.

The new company, the Bay State, was organized and work was begun May 1st last, and they are now employing 18 men engaged in sinking a shaft near the east line, in some of the earlier workings. This pit is down about 20 feet in mixed ore; they have a small engine hoisting. To the northwest, on the other side of the high knob that intervenes, they are making a long cut to reach a body of ore into which a shaft has been sunk a distance of 16 feet. This deposit they have crossed, showing a width of 30 feet, and have tested its length for about 100 feet.

Mr. Allen directs the work; he is an old worker in this vicinity and has done a good deal of unavailing exploring about Negaunee, but is now confident of success. In 1872-73 he operated what was called the Allen mine.

The Allen mine.

P. 203.

This old mine, lying next east from Green Bay, Thomas Tracy, with some others, is exploring. They have chosen a place where formerly some work has been done, and are preparing to sink a shaft in a ledge of mixed ore. As they have been but a few days at work, there is of course but little to show.

475 The Milwaukee mine

P. 203.

proved a bonanza to its fortunate holders and has, apparently, been a no less valuable possession to its subsequent owners. The dis-

covery of the ore, analysis of its properties and a description of the mine were fully given in the last annual report.

Like others of the Negaunee hematite mines, the Milwaukee is a succession of open pits of a magnitude corresponding to the extent of the deposit, which has been or is working. Those from which the product is now obtained are Nos. 2, 3, 6 and 7 pits. The others are either wholly idle or occupied by scrammers. A small amount of ore is obtained from No. 1 pit and is trammed through into No. 2, which is now the most westerly pit. It is about 100 feet long, 40 feet in width and 100 feet deep. The shaft goes down from the southeast side on the foot wall. The skips discharge into the tram cars at the top, which are run to the pockets. From the bottom of the open pit the shaft is sunk 40 feet, and they are going to push the work underground.

In the open pits the ore was capped over and worked out in the winter and the surfaces, etc., above allowed to fall in. The shaft is in the foot wall 5 feet from the ore; they have cut through and around the ore 10 feet, and come to soap rock; the drift will be pushed through this, as it is doubtless only a partition in the ore, since in the levels above the same thing occurred, the ore appearing south of the schist and widening. On the surface the ore was nar row, now it is 10 feet.

From the bottom of the shaft in this pit they have drifted west 115 feet in ore all the way and come to soap rock. Also a drift a little to the northwest 150 feet was all in greenstone when 476 they cross-cutted 35 feet, but found no ore. This drift and crosscut will be extended when they have the facilities of getting out the water which now interferes with the work.

No. 3 is a long ragged pit, 600 feet north of No. 2, with a south wall of mixed ore. Little holes or pockets are now being mined out in it. The open pit is 50 feet deep and the shaft is 90 feet below the bottom. The skip road goes down from the northeast side and extends to the bottom. Underground the vein is 75 feet long and 20 feet wide, but is a little mixed. They are working the level and have a stope the full length and width of the vein and 40 feet high. The bottom is in ore; they have sunk 20 feet below the level and find it the same.

The pit now furnishes 15 to 20 tons per day. A track runs from the top of the skip road to the ore pockets over the railroad.

The ore from the mine is sold to a considerable extent to local furnaces. Twenty-five cars per week are sent to the Martel furnace, St. Ignace, and as many more to the Excelsior and Carp furnaces. The mine makes barely enough water to keep the pumps going.

No. 5 is a small pit, the open part being about 70 feet across and 50 feet deep, in the center of which, below the bottom, the shaft goes down to the southwest. To the southeast is a run of ore 8 or 10 feet wide, which they are stripping from the pit to the mine. It appears to be widening out; where it starts from the pit it is small, but as uncovered. It now shows a width as above indicated. Be-

low the bottom the shaft goes down 75 feet, and they have an underground pit with a deposit of ore of the same length and 20 feet wide, while they are taking all out except the pillars. The vein is much cleaner than in No. 3. The ore requires but little sorting in this pit.

477 No. 7, about 300 feet east from No. 6, is the most northeasterly pit in the location. It is really divided into two open pits, the west one of which is idle temporarily, but is not worked out, as the bottom is ore. The east pit is about 100 feet long by 75 feet wide and 40 feet deep. The ore has a width of 30 feet at right angles to the walls, and is very clean, free from rock, etc. When a bunch of jasper does occur, it is isolated and easily separated from the ore. The underlay is a jaspery hematite and the ore makes into it.

The ore appears to extend south of this pit, beyond the rock that they are now following down to the foot wall. At the west end the deposit makes an elbow, cutting across the formation to the south and has been followed 50 feet. Another branch of the ore appears to be making towards No. 6, but has not been followed.

This pit is yielding a daily product of about 75 tons of ore, the total weekly product being about 800 tons.

To the west a few men are at work on a small deposit from which they have got out 150 tons and are working to see what may develop. In No. 5 pit, lying south of Nos. 6 and 7, they have in the east end a vein of ore 10 feet wide, which they are stripping; it seems to be making toward No. 7. In that same pit, No. 5, there are two long cuts to the south, which afforded very fine ore. There are three double, equal to six single ore pockets, having a total capacity of 120 tons. These are connected by rail track with each of the shafts, and stand above the railroad, so that the cars are filled from the pockets. The ore from all the pits is mixed together and sold as 58 per cent. ore. The product last year was 31,365 gross tons and will be fully equaled by the output of 1882. The aggregate yield of the mine during the two years that it has been worked is 45,448 tons.

The general agent of the company is Mr. A. Kidder of Marquette; local superintendent is Capt. James Foley, Negaunee; mining captain, Gilbert Carmichael, Negaunee.

478 1882.

The Milwaukee mine (April 29th).

P. 226.

This mine was carefully examined and fully written up last June, and the description published in the report for 1881, and there is not much to add, especially as the mine is mostly filled with water.

Mining work was discontinued in February last, and then the only work done is to keep the water out of Nos. 7 and 8 pits, in the hope that the ore markets might sufficiently revive to induce the

resumption of work, if only to a moderate extent. Previous to stopping 10,000 tons of ore were mined and are now held in stock.

The only pits that are now deemed of value in the Milwaukee mine are Nos. 7, 8, 9 and 10. The two former are together and really form one and the same pit. They are worked underground, dipping to the south, and extend east and west, giving a stope 200 feet long and 6 feet to 25 feet wide. The ore deposit in these pits is widening out apparently, and so far there is a good body of ore here. No. 9 pit is further to the north. It is worked underground and entered by two shafts 300 feet apart, which follow down the foot wall to the south. Its product is a beautiful umber colored hematite that Captain Foley says is well liked by furnace men.

No. 10 pit is close to the west line; in fact, the line crosses the open pit, dividing it between the Milwaukee and Wheeling Iron Company. The pit has a good body of ore, which analyzes the best of any in the mine, being above 60 per cent. in iron and below 1-100 per cent. in phosphorus.

Captain J. C. Foley remains agent of the company. It is held by the company on a lease from the Negaunee Iron Company.

479 The Wheeling Iron Company (May 1st).

P. 227.

This is a new organization formed to mine in the land which joins the Milwaukee on the west. The only discovery of ore which has been made is the westerly extension of No. 10 pit of the Milwaukee mine. This has been stripped of the drift down to the ore for a distance west of 70 feet, and it shows a width of ore of 60 feet, measured horizontally north and south. South from this opening, 300 feet, is the diorite, which rises abruptly to a considerable height. The ore analyzes well; samples gave 62½ per cent. in metallic iron and .084 per cent. in phosphorus. The estate comprises 80 acres in section 7, joining the Milwaukee and McComber mines. It is held on a lease from the Negaunee Iron Company.

The officers are Daniel McGarry, president, Cleveland, Ohio; J. C. Foley, general manager, Negaunee, Mich.

The Aetna Iron & Exploring Company (May 1st.)

P. 227.

is also a new organization, which has resulted from the success of the explorations prosecuted last summer on the Manganese property. They have uncovered a deposit of ore 145 feet long, east and west, and 22 feet wide; the opening is 50 feet long. The company are now working a force of 15 men and have contracted 5,000 tons of ore, but hope to get out this season 8,000 or 10,000 tons. They have a good showing, and if the ore holds out, as there is no reason to doubt but it will, the company will accomplish their intention.

A branch of the M. H. & O. R. R. runs along near the pit. The

land is held on a sub-lease from M. Shaad, who holds from the Negaunee Iron Company. On the adjoining 40 to the east a good "find" of ore has recently been made by the Miller Brothers of Negaunee.

480 The New York Hematite mine.

P. 227.

The explorations which were made last summer on the property with a drill, and which were at one time thought to be looking very favorable, resulted finally in a failure: nothing really of value was discovered.

The mine has produced as follows:

Years.	Tons.	Years.	Tons.
1870	1,809	1877	3,307
1871	2,921	1878	4,674
1872	9,925	1879	2,737
1873	6,629	1880	2,063
1874		1881	
1875	750	1882	1,970
1876	450		
Total gross tons			37,241

The mine is on section six, south of the city of Negaunee but a short distance. J. C. Foley, agent, Negaunee, Mich.

The Star mine

P. 228.

on section 8, was described last year, and while considerable subsequent work was done, they have not yet succeeded in developing a very promising mine. The work has been suspended.

The Chicago mine.

P. 228.

In the southeast corner of section 7, has been idle for a year past. The ore that was in stock in the spring of 1882 yet remains unsold. The mine has yielded 8,895 tons of ore.

The Bay State mine

P. 228.

got out 1,593 tons of ore last year, but no work has been done since October last. Its prospects are not extremely flattering, though they have a small deposit of ore which might develop into greater magnitude on further working. The total number of tons shipped in past years is 16,768 gross tons.

481 The Valley City Iron Company

P. 228.

have been exploring east from the Pioneer furnaces in Negaunee, having bored three drill holes, in two of which a moderate thickness of ore was found, covered, however, with 40 feet of quicksand, succeeded by rock. The company began the work of sinking a cais-on through the quicksand to reach the ledge, but operations have been suspended. The land held by the company comprises 80 acres, held on a lease.

The Milwaukee mine.

1885, pp. 85, 86, 87, 88, and 149.

P. 85.

At present the most important of these south side mines is the Milwaukee, which is now working and under very favorable indications of prosperity. During the season they have worked three pits, Nos. 7, 8 and 9. The latter is a new shaft 60½ feet northwest of No. 8. No. 8 shaft dips southeast. No. 9, 520 southwest. The vein runs east and west. The shaft is 120 feet down. The ore body is 10, to 40 feet wide and has been worked west 200 feet, where it is cut off by a bar of rock, though there is a leader of ore in the west side which they will drive on.

The shaft is mainly sunk in rock, though it started in ore; it is now, at the bottom, in ore, and the ore continues 50 feet east of the shaft. In the level above, the shaft was just at the east end of the ore, thus showing that the ore is lengthening east.

No. 9 is the best showing they have in the mine, and it seems likely to be the main source of supply for the product for the coming year. The pits, Nos. 8 and 9, are connected by drift for air.

No. 8 shaft goes down to the south; the depth of the first level is 41 feet. This level runs off to the west with slight bends to the north, for a distance of 240 feet from the shaft when it goes
482 west 50 feet, bringing the end of the working near to No. 9. There are two levels below the first, which conform in direction with the first, except that they do not extend so much north. The shaft is sunk to the fourth level, and on its way to the fifth.

The ore body varies in width from narrow to wide; it makes out into pockets, and from these the most of the ore is obtained.

The depth of No. 8 is about 300 feet, all underground. The ore occurs in loose jasper in pockets and lenses, etc., in a similar manner as is found in all this south side range.

Between May and November they have mined and shipped 38,000 tons, all taken from the three pits, ⅛ of it coming from No. 8, ⅓ from No. 9, remainder from No. 7. No. 9 looks very favorable, in fact it improves as it is developed; the ore body is lengthening, as before indicated, by extending further east. But No. 8 is not looking as well as it did, rock is showing in bottom level. In drifting west in the fourth level they encountered rock at 60 feet from the shaft; in-

stead of attempting to push through it they are sinking a winze from the third level, further to the west, to see if this rock continues, or if it is only a temporary bar and ore will be found beyond. The Milwaukee mine ore is a very fine quality of hematite, not exactly Bessemer, but very near it.

All the ore averages above 60 per cent. in metallic iron—is about 2 to 3 per cent. silica, and .065 to .070 phosphorus, and brings $2.20 to $2.25 at the mine.

The average force employed was 100 men, but during the winter 25 will suffice.

The Wheeling mine.

P. 87.

The Wheeling mine shaft is 150 feet deep. They have a good body of ore, though somewhat broken up and interspersed with rock. The hoisting plant is the same that was formerly at the Chicago mine. They have taken out, all told, 10,000 tons of ore.

The product for 1885 was 6,383 tons. Captain Foley says
483 there is no profit in the work, paying 50 cents per ton royalty, and selling the ore for $2.00 per ton. The mine will probably be pumped out and work resumed in the spring.

Jas. C. Foley, agent, Negaunee, Mich.

The Manganese mine,

P. 88.

operated by Messrs. Shaad and Breitung, has furnished 3,112 tons of ore the past season, taken from a pit east from the McComber. But nothing has been done during the past two years of any note at the Aetna, Rolling Mill, New York, Chicago and other locations situated in this south side range of mines.

Bay State.

P. 88.

They propose to do some work at the Bay State location the coming winter to test the ground a little further. A few years ago on the north side of the bluff where they had test-pitted a good deal, they found indications which they deemed it best to develop further, and to this end they put a party at work the past summer to sink a shaft in a loose ore; but after getting down about 20 feet they concluded to wait until the ground should be well frozen. They claim to have got into good ore, and will open it up this winter and find out about it.

Furnaces.

P. 149.

In citing these it is proper to begin with the

Pioneer,

built at Negaunee, since it is the oldest furnace, operated in the State. The Pioneer furnace went into blast in February, 1858, and has been continuously operated since, saving only such stoppages as necessarily occur. It was originally the property of the Pioneer Iron Co., which company was subsequently, in 1866, absorbed
484 by the Iron Cliffs Co., that now owns and operates the furnace. There are now two stacks, each 45 feet in height, with 9½ feet bosh, and have an average capacity of 45 tons of pig iron per day, using 100 bushels of charcoal to the ton. No. 2 stack is the only one that has been operated the past year. It has turned out 15,718 tons of pig iron during the year ending December 31, 1885.

1886.

The Iron Cliffs Co.

P. 80.

The company was organized in 1864. Two years later, through the absorption of the Pioneer Iron Co. by the Iron Cliffs, the estate was increased to 40,000 acres. It is needless to state that comprised in these lands are some, undoubtedly, among the most valuable mineral lands in the State. The estate is so large and covers so much of the mineral range that there is always a probability of finding deposits of ore within its borders.

For 20 years the company has been an iron manufacturer as well as an ore producer. It has operated continuously since 1866 the Pioneer furnace of Negaunee, the oldest on the lake. Its mines are the FOSTER, BARNUM, SALISBURY and PIONEER.

The Pioneer

P. 83.

is a new mine in the northwest ¼ southwest ¼ of sec. 4, T. 47, R. 26. The opening is close to the west line of the property. In fact, it is a continuation of the Mitchell mine that was found and explored in the adjacent 40 to the west.

Work began here last summer. I first visited it in August. They had just begun the work of stripping the ore and of preparing to stope it. Now, after five months, they have a pit 200 feet long east and west, and at the deepest point it is about 85 feet down. The ore body is apparently about 30 feet wide; though it does not seem to be altogether clean, *i. e.*, free of rock.
485 They are at this time, winter, further removing the capping of rock getting ready to stope in the spring at the opening of the shipping season.

The ore is a good quality of hematite, that proves to be Bessemer so far as the analyses have been made to test it. The dip is to the south; further west, half a mile at the Buffalo, the dip is north.

The pit is on the section line 600 feet south of the ¼ post. The product shipped the past season was 5,140 tons. Alex Maitland, general manager of the Iron Cliffs Co., directs the operations.

The Buffalo Iron Mining Company.

Pp. 90 and 91.

The Buffalo is the most important, as yet, of the new Negaunee mines. Its discovery was a very fortunate one for the parties who made it, since they have recently sold out for $200,000, from which sum they realized $125,000 clear profit to themselves. In addition to this they realized a net residue, over and above all expenditures made in opening and working the mine, of $12,000.

The ore was discovered in June by Geo. Mitchell, and he associated with himself in working the deposit H. H. Milden, A. A. Anderson and Ed. Lobb. The realty belongs to the Arctic and the Pioneer Iron Companies, and comprises the northwest ¼ of southeast ¼, section 5, T. 47, R. 26.

The former proprietors mined and sold 10,860 tons, which they sold at the mine for $2.50 per ton. The royalty is 25 cents per ton. It is a promising mine. I am inclined to the opinion that the vendors sold out cheap enough. The deposit is opening up finely. They have now, January 1st, about 3,000 tons of ore in stock. The ore is overlaid by about 10 feet of drift, and has a width of 100 feet, following along the foot wall.

There does not seem to be any suitable hanging wall as yet, so that it is impossible to say how wide the deposit may
486 prove to be. They are mining in open cut, about 40 feet deep. The dip is to the north 70 degrees, and the ore runs east and west. They are stoping east in the open cut, and have a drift ahead, 80 feet, of the stope. They are preparing to sink a shaft, and will mine under ground. Have engaged machinery, two 4-foot drums, an engine 14 in. x 24 in. The company is working just now 40 men, under the supervision of Capt. Geo. Mitchell. The opening is at about midway east and west of the 40. There are several test pits to the east and west of the pit, which are in ore. When the shaft is sunk to sufficient depths they will cross-cut the ore and learn more definitely regarding it.

The ore is clean, a soft, brown hematite that cuts like clay, some of it. It analyzes fully 60 per cent. in iron, and at about the Bessemer limit in phosphorus.

The South Buffalo

P. 92.

is the name given to a new mine adjoining the Buffalo property on the south, the S. W. ¼ of S. E. ¼ of sec. 5, 47, 26. Work of exploration was begun in November last. They have sunk a drill 140 feet, the last 50 feet of which is apparently clean ore, which analyzes above 62.4 per cent. in iron, 7.48 per cent. silica and .094 in phosphorus.

Milwaukee Iron Mining Co.,

P. 92.

disposed of a pretty large product last year, as will be seen by referring to the table of products. But, notwithstanding, the mine is still in good shape and affords all the indications necessary to assure the company that it will be able to mine an equally large product the ensuing year.

In No. 7 they are taking out the shaft pillars and will thus get about 3,000 tons of ore.

The west part of No. 8 is good, but in the east end they are removing the ore pillars. The ore now to be seen in the mine
487 is that just mentioned in No. 8 pit and the whole of No. 9.

The latter is looking extremely well. It is well opened and is showing fine stopes of ore. Probably there are in sight, January 10, 25,000 tons of ore, perhaps more. No. 9 pit is 285 feet deep. The bottom is all of ore. The length is 300 feet east and west, and it is 15 feet to 40 feet wide. East of the shaft the deposit is pockety, while west of it it is more uniform. They are sinking No. 9 shaft for a new "lift" 70 feet.

They are sinking a new shaft, going down vertically from the surface. Its location is 305 feet south of No. 9. The depth to sink the ore is 180 feet. The shaft will connect with No. 9 when the ore is reached. It is 6 ft. x 10 ft. inside timbers, and 125 feet deep at present writing, January. Analyses of samples of the ore shipped give a per centage in iron of 67 per cent. and from .019 to .21 per cent. in phosphorus.

The force employed averages 85 men.

Bay State Mining Company.

P. 94.

The property will be explored thoroughly the coming year.

The Wheeling mine.

A limited amount of work was carried on in 1885, which resulting in mining and shipping 6,383 tons of ore.

James F. Foley, agent, Negaunee, Mich.

The Pioneer furnace

P. 171.

at Negaunee, No. 2 stack, has been run as usual, but they were necessitated to stop for some time, so that a less amount of iron was made as a whole than usual. Product for 1886 11,079 tons. The Pioneer has been run for 30 years.

Alex. Maitland, general manager, Negaunee, Michigan.

488 1887.

The Milwaukee mine

P. 15.

still holds the prominent place which it first assumed among the Negaunee hematites, having shipped 51,000 tons the past season. I find on examination that they are reasonably sure of the usual product the ensuing year. The stoping is confined to No. 8 and to No. 9 pits, the latter holding still, as it did a year ago, the chief ore deposit of the company. It has a length east and west of about 175 feet and a width of 40 to 50 feet.

The ore is somewhat variable in quality, but it averages above 60 per cent. in metallic iron, and but little above the Bessemer limit in phosphorus; in fact the ore used to be sold for Bessemer.

The Milwaukee has produced annually as follows:

Years.	Tons.	Years.	Tons.
1879	941	1884	25,000
1880	13,141	1885	38,466
1881	13,254	1886	46,693
1882	41,200	1887	50,471
1883	805		
Total			247,972

The Grand Rapids Iron Co.

P. 16.

is an organization formed during the close of the present year, 1887, for the purpose of operating the property which joins the Milwaukee on the west and heretofore known as the Wheeling mine. The property was held by Messrs. J. Q. Adams, Jas. F. Foley and Ed. Anthony, of Negaunee, who sold it for the sum of $30,000; though as the transaction was made through the medium of a Chicago mining agency, it cost the present owners $60,000, one-half of this sum cash and one-half stock of the company.

The old shaft was 180 feet deep. The new company has
489 sunk it to 220′—40′ deeper, and has drifted south 120 feet and west 50 feet, and has cut through three different deposits of ore, which have respectively widths of 30 feet, 25 feet and 28 feet. In the new level 220 feet down, they have drifted west 190 feet from the shaft and east to the Milwaukee line 80 feet. Of this distance 180 feet is through ore. The ore dips south, but inclines also to the west. The quality is the same as that of the ore from the Milwaukee mine, well up in iron and nearly low enough in phosphorus to be Bessemer. They have also begun to sink a new shaft, located 210 feet west of the old one. They have a hoisting plant with two Rochester drums 4½ feet in diameter. The company mined 1,100 tons, taken from the drifts, and expects to secure a good product in 1888.

Buffalo mine.

P. 17.

in the northwest ¼ of southeast ¼, section 5, T. 47, R. 26, which has been held and operated — the present company just one year. The mine is now all under ground and reached by two shafts which are in separate deposits of ore, which latter I have examined and find to be of good dimensions. No. 1 shaft is the easterly one, it is 135 feet deep and sunk in the foot wall. The ore is reached through a cross-cut from the shaft and is opened east 92 feet into the open pit. The width of the ore is about 40 feet, and it is a clean body of ore; west of the cross-cut the opening extends 45 feet, and the ore maintains its full width. In fact the breast of the drift towards No. 2 shaft is ore. I discovered no indications of the ore narrowing.

No. 2 shaft is about 325 feet west of the former; it is also in the foot wall through which this cross-cut to the ore, that west of the shaft is 45 feet wide and is opened a length of 120 feet, the breast of the drift west being still in ore. East of the cross-cut the ore is at first narrow, but widens out so that at the east it is 60 feet wide.

At least double the last year's product can be obtained the coming year. There are two 42 drums and a 60-horse power engine. The mine has yielded as follows:

490 1886..... 10,860 tons
1887..... 24,886 tons

The South Buffalo Mining Company

P. 18.

holds the 40 next south of the preceding. The company began in April last to sink a shaft, which is now 125 feet in depth. Its location is 300 feet from the east line, and midway between this shaft and the line they have begun to sink No. 2 shaft; it is east 150 feet and north 60 feet from No. 1 to get into foot wall. The mine is in the northwest corner of the 40. The first level is at 90 feet and it is opened a length of 250 feet south and west, and they are still in ore going east; but west it is mixed. The ore attains a width of 90 feet at the cross-cut.

An output of 30,000 tons can be made next season. They mined and shipped the past season 4,914 tons of ore.

The Swan exploration,

P. 18.

where they are sinking a shaft, which, December 20th, was 125 feet deep in ore and rock. They have engine, boiler, hoisting drum and pump, are working ten men.

It is the southeast ¼ of southwest ¼ section 5, 47, 26.

The Kaufman

P. 19.
option, where they are operating a diamond drill. It is the southwest ¼ of southwest ¼, section 5, 47, 26, and is called the Blue mine.
In the east ¾ of the northeast ¼ of southwest ¼ of section 5 is

The George Mitchell

P. 19.
exploration. Mr. Mitchell has a plant of machinery and has sunk 75 feet and is drifting to discover ore.
Still west, adjoining the Mitchell, is

491 The Lucky Star,

P. 19.
though on what ground it is deserving of an appellation that is evidently intended to suggest the possession of unlimited quantities of ore, I am not informed.

The Pioneer

P. 19.
is also worked out and shut down.
It afforded in 1886 5,140 tons, and in 1887, 1,203 tons.
It is one of the Iron Cliffs Co.'s mines.

Pioneer furnaces

P. 119.
owned by Iron Cliff Co., Negaunee, Mich.
There are two stacks. No. 1, 52 x 10 feet, built 1858. No. 2, 56 x 9 feet, built in 1859, rebuilt in 1877.
Only one stack operated, in which were made 18,787 tons of pig iron in 1887. The best work done was during the week ending February 11th, 1888, when No. 1 stack turned out 458 tons of pig iron, being 65 and 3-7 tons per day, using 94 bushels of charcoal to the ton.

1888.

The Pioneer

P. 153.
is also one of the Iron Cliff Co.'s mines, situated in the northwest ¼ of southwest ¼, section 4, T. 47, R. 26, and has been practically exhausted. However there were shipped from it in 1888, 8,712 tons of ore, making a total of production of 13,852 tons.

The Milwaukee Iron Co.

P. 183.
has so nearly reached the termination of its lease of the mine situated away up in the hills in the south part of the city of Negaunee,

that unless a renewal is made there is not likely to be much exploring done for additional ore.

492 As it stands now the company can see the limits of its ore. No. 9 pit, at the west end of the property, adjoining the Grand Rapids mine, contains all there is in sight, and in this pit they are to the bottom—in fact have little left except the pillars. Still they mined 60,000 tons last year, and will make an equal product, they say, the coming year, and even then will have ore for a product in 1890—the last season of the lease. It is not considered that the possibilities of the location have been exhausted.

The mine yielded in 1888, 48,908 tons, and the aggregate of the yield of the mine is 296,880 tons.

The Grand Rapids Iron Co.

P. 183.

Nothing important has been developed in the past year. The mine can probably furnish double the ore that has been taken from it in the given time, since they have the new shafts completed and now have two shafts to hoist in. The old shaft, which is vertical, is 217 feet deep, while the new one on the north side is 240 feet long; but as it descends at an angle of 45°, it does not reach so great a depth as does No. 1. This new shaft is a good one, sunk all in rock, and is well timbered. It is operated with a skip. Cost $28 to $32 per foot to sink it. At a depth of 160 feet from the surface is an exploring drift made to the west 60 feet, all in rock. The ore opened out is irregular, but it has a length of 140 feet, varying in width from 18 to 30 feet and the bottom is ore. They have two raises that come to the surface, through one of which they run down the timbers used in the mine.

Work 60 men. Product, 1888, 11,612 tons. Total production of the mine, 19,145 tons.

The Queen,

P. 185.

which is one of the largest "showings" of ore for the amount of development made, that is to be seen anywhere. The shaft is 140 feet deep and they have two levels—the upper one 100 feet
493 from surface. They have opened a width of ore 200 feet and length of 100 feet. There are several seams of soap rock, which separate the ore into different lenses, and this rock has an aggregate width of 20 feet, leaving 180 feet of ore. But I do not see that they have, necessarily, reached the limits of the ore, either north or south. Of course they have not yet gone the length of it. The three deposits crossed, separated by soap rock, are respectively: north vein 60 feet, middle vein 80 feet, south vein 40 feet. In the upper level analysis of these deposits gave for north vein, iron 63.01 per cent.; phos., .274 per cent. In the bottom level an analysis of the same deposit gave, iron, 64.93 per cent.; phos., .078 per cent. In upper level analysis of south vein gave, iron, 63.14; phos., .174.

Of the blue ore—south vein—analysis by same chemist gave, iron, 61.23; phos., .098.

These latter samples were taken in the bottom level, and indicate great improvement in the ore. The north ore is soft and contains a good deal of magnesia. The south lens is hard, blue hematite.

The land is owned by the estate of Ed. Breitung and W. P. Healy, and is held on a lease of 40 cents per ton royalty by the Queen Mining Co.

The ore is very clean—that is, there is no rock in it.

The fortunate owners of this lease will realize a handsome fortune doubtless. The shaft is vertical with skip and is near the northeast corner of the 40. About 50 feet from it the dip is north.

It was formerly called the Swan.

The Prince of Wales Mining Co.

P. 187.

is the corporate name given to a newly organized company, holding the northeast ¼ of southwest ¼, section 5, a forty acre parcel which joins the Queen on the north, and held on a lease by the company. The body of ore found in the Queen no doubt extends into the land north of it.

494 ### The South Buffalo mine

P. 187.

is in the southwest ¼ of southeast ¼ of section 5, thus placing it directly east from the Queen, which it joins. In fact the shafts are very near together, and under ground the Queen people have in one place worked up to the line. The South Buffalo, as well as the Queen, has a large amount of ore in sight. Apparently the South Buffalo could be so worked as to produce a large amount of ore. The first level is 90 feet below surface—80 feet of distance through rock. Second level is 160 feet. They have opened east from the shaft, in bottom, 400 feet, two sets wide, and in the first level have raised up three to four sets high. They have a great width of ore as well as length; have gone west 160 feet to the Queen line, making 560 feet in length open, and more than 200 feet north and south in one place. On east have not crossed the ore only at the shaft.

No. 2 shaft, begun a year ago, is to the ore.

An analysis recently made of this ore by Mr. Eddenburg of Marquette, gave, for two samples furnished him: Iron, 63.98 per cent., phos., .086 per cent.; iron, 63.88 per cent., phos., .076 per cent.

The force employed now is about 40 men.

Product, 1887, 4,914 tons; product, 1888, 24,707 tons.

The Buffalo mine

P. 188.

being in the northwest ¼ of southeast ¼ section 5. The Buffalo was the first one discovered and its success gave the stimulus to all the subsequent explorations that has led to such excellent results.

There are four mines cornering at this 40 post and two of them have shafts near the common corner and the Buffalo is sinking another. The new shaft is 80 feet from the south line, 250 feet from the west line and 400 feet southwesterly from No. 2 shaft. The Prince of Wales joins on the west, the South Buffalo on the south and the Queen "corners" at the southwest.

495 When the new shaft is completed the company will have three. No. 1, the most easterly one, which is 135 feet deep from present indications will not be sunk further. They are boring with a diamond drill, to prove the ground at the east end at greater depth, and if no more ore is found I understand that they will mine out the pillars No. 1, which will yield about 5,000 tons of ore. They are now sinking No. 2 and the new shaft and are now mining about 130 tons of ore per day. The body of ore at No. 2 continues to be about of the same magnitude as heretofore and will yield as large a product as last year. The Buffalo shipped last year 30,801 tons.

The Blue, Lucky Star, George Mitchell, Delaware and Lackawanna,

P. 189.

which are contiguous mines, all in section 5, are idle, nothing very valuable having been developed.

Pig iron.

P. 127.

Statistics of Productions of Pig Iron in Michigan Blast Furnaces, 1888 and Several Previous Years.

	1884.	1885.	1886.	1887.	1888.
Iron Cliff Company, Negaunee Pioneer	.....	15,718	11,079	18,787	23,235

1889. The Buffalo, South Buffalo, Queen, and Prince of Wales Mines.

P. 136.

are all in sec. 5–47–26 and all together hold 145 acres of land.

The great deposit of ore that has given to these properties such extraordinary prominence and value, is in the low ground right about this common corner.

It is one of the most active mining locations in the country, new shafts are sinking, shaft houses building, engine houses going up, and powerful machinery being placed in them, extensive ware houses, machine shop, carpenter shop, blacksmith shop, boiler

496 house, office, dwellings, etc., are building, and with all, the underground work, the mining and hoisting of ore goes on rapidly; 1,000 tons per day being the average production. The ore has an extreme width of 400 feet, and a length of 1,000 feet and upwards. Of course it is not continuous, but there is ore a long way,

nearly the half mile of the length of the property. It generally has a good width, and near the center, at the north and south ¼ line, the ore is extraordinarily wide. There is certainly ore enough in sight in all the mines to insure a large output.

They have adooted a sensible plan to work, having located four shafts in the south side in the foot wall, these will be 300 feet deep, and double skip shafts from which they will cross-cut to the ore and through it, and take it all out, letting the surface settle as the ore is removed. The new buildings and machinery are first-class. The engine houses are covered with corrugated iron and no pains or expense is spared to make the equipment equal to the best.

There is a run of ore a little west and east of the main deposit, that is 200 feet long and 50 to 75 feet wide. The ore in these mines is all well up in iron, but more variable in phosphorus. It contains about 60 per cent. iron, 60 to 65 per cent., and from .046 per cent. to .090 per cent. phosphorus.

Although worked under one management and as a single mine, each mine will be credited with its share of the product, etc. There will still continue four corporations under one head.

The Lucky Star

P. 137.

and other locations lying west of the Queen, etc., mines are being further explored. At the Lucky Star the diamond drill is employed.

The Milwaukee mine.

P. 138.

They are working along close to the Grand Rapids mine where all the ore exists that is known of on the property.

497 Product 1889 was 52,728 tons, making aggregate of 349,608 tons.

The Grand Rapids mine.

P. 138.

The old workings are not promising; but further west the results of recent drill borings indicate something more favorable for the future. It is contemplated to sink a shaft to reach the ore thus found. The superintendent Mr. Wm. B. Davis, estimates that the mine will produce 25,000 tons of ore in 1890, even if the new shaft is not sunk.

The product in 1889 was 29,059 tons, making a total of 39,203 tons.

Pig iron.

P. 170.

Statistics of Production of Pig Iron in Michigan Blast Furnaces, 1890 and Several Previous Years.

Name of company.	1886.	1887.	1888.	1889.	1890.
Iron Cliffs Company, Negaunee, Pioneer.....	11,079	18,787	23,235	24,678	26,298

For 1892 and 1893.

The Davis.

P. 23.

This is the Grand Rapids under a new name. In April, 1892, the mine, which is in the city of Negaunee, was closed down. About May 1 of the same year (after a short suspension) work was resumed with about 40 men.

The shaft was sunk to a depth of 450 feet and new life infused into the enterprise.

The mine sent out in 1892, 22,823 tons of ore.

The Blue.

P. 34.

The work was done through a three compartment shaft, about 500 feet deep.

The ore is a non-Bessemer, containing from 62 to 63 per cent. iron.

498 The first shipment was in 1893, when 13,810 was sent out.

Yielding to the pressure of the times, the Blue was also temporarily closed down in September, 1893.

The Iron Valley.

P. 39.

This is another of Negaunee's mines and was formerly known as the New York Hematite.

The ore found by drilling is said to have assayed about 66 per cent. iron and .032 phosphorus.

The Buffalo.

P. 41.

This is the name under which the group of mines operated by the Buffalo Mining Company is known. The group comprises the Buffalo, South Buffalo, Prince of Wales and Queen mines, and was consolidated in 1890 by lease to Ferdinand Schlesinger of Milwaukee.

After the consolidation very much opening work was done and the whole plant brought under a system which has operated very smoothly and successfully. From time to time exploratory crosscuts and drifts were driven and some diamond drill work done which gave good results, part of which was the opening of what has been locally designated "The New Queen."

There has been added to the equipment during the past two years much machinery of a first-class type, and the surface improvements in the way of office, dry-house for the miners, buildings for the mechanics and for supplies have been great.

A visit underground showed a busy world, and a climb into several of the stopes disclosed a condition of things which, to tell the truth, I did not think existed.

Every stope is timbered as the ore is taken out, and when the work

is done the bottom is laid with lagging and the whole weight of surface and timbers settles upon this, making a very safe back to mine to in the next stope.

The shipments for 1892 were..... 380,810 tons.
The shipments for 1893 were but..... 107,145 tons.
499 Sunk in rock, 1892..... 796 feet.
Drifted rock, 1892..... 1,934 feet.
Men employed, 1892..... 540.
Men employed, 8 months, 1893..... 490.

The importance of this industry to the city of Negaunee is very considerable from its financial standpoint, as the large working force adds materially to the volume of business.

Pub. 1896 for 1895.

The Buffalo Mining Company.

P. 15.

Under the above title now operated the Queen, Prince of Wales, Buffalo and South Buffalo mines. The ore deposits occupy troughs made by the folding of the slates. On the south forties there is a fold that holds what is termed the "Regent" lens, this being on the Queen tract. The Queen mine old lens occupies another fold in the same forties farther north, and in the next fold is the Prince of Wales and the Buffalo vein. The lenses pitch to the west and at that end of the present workings a very strong capping is met with. The ore is a non-Bessemer, a soft hematite, that gives about 62 per cent. metallic iron. In the "Regent" lens, which was opened about two years ago, there was ore of Bessemer grade near surface, but at greater depth it is changed to a non-Bessemer. Work of mining has been confined to this Regent deposit since the resumption of operations in 1894, and a fine showing is now presented. They have mined out the ore to the fourth level, 250 feet from the surface, and are now preparing the fifth level for attack as soon as the fourth has been finished. They have a two-skip underlay shaft here that inclines at an angle of 45 degrees, following the dip of the foot wall.

The Queen has reached a vertical depth of 450 feet, and has a level of ore standing that can be wrought at any time when there is a demand for it.

The Prince of Wales is 450 deep and awaits the pleasure of
500 the management. It has large stopes of ore that can be readily obtained. There is a rope haulage plant that handles the product from stopes to shaft at a rapid rate of speed. The shaft is a fine one, having two cage ways. Skips and cages are worked in balance at all the shafts of the Buffalo company, and single engines are employed, changes in their original fittings having been made to permit them handling two skips without centering.

The old Buffalo mine has ore showing, and could send out a considerable tonnage but nothing is being done at this point.

The ore deposits of the South Buffalo are exhausted, and the shaft is used for the sending of timber into the mines.

The shafts are all in solid ground at the different properties; substantial rock drifts have been put in connecting the several mines, so that all the ore can be obtained, the miner protected and the ventilation of the underground workings made perfect. The mines make considerable water, they taking a large volume coming from the Blue property that adjoins immediately on the west, and which is idle. The company possesses fine machine, carpenter and smith shops, is well equipped for taking care of its affairs, and has expended a large amount of money in preparing for the future. When working full force of men about 600 are employed, but this number has not been given place since the depression of 1893.

The mines of the company have produced 2,053,705 gross tons of ore, of which 220,360 tons were sent out in 1894, and 160,817 tons in 1895. The fee is owned by the Breitung estate, W. P. Healy and others.

The above mines were closed on the second of January, in this year, and the working force of 225 men discharged. At the present time, March 10th, 1896, the mines are still idle, occasioning great distress amongst the labor of Negaunee, the Buffalos, when active, being the principal labor employing concern in the town.

501 The Grand Rapids mine.

P. 18.

They have two shafts in the foot wall, these being down to the 450-foot level, and have a length of 450 feet, measured on the incline, of about 65 degrees. The most westerly of the shafts was put down 100 feet in the winter of 1895–6, but no mining has since been done. They have a deposit of ore possessing a thickness of 20 feet, and it has been opened on its trend for 300 feet, the ore being a non-Bessemer. Two 5-foot hoisting drums are in workable condition and are ample to take care of the ore mined.

The Blue mine.

P. 20.

This mine is idle and has been since October, 1894. There is plenty of ore in the mine and its ore deposit is a continuation of that found in the Queen. They have a shaft in the foot wall to a depth of 540 feet, the lowest level, the third, being run at a depth of 526 feet. No mining has been done upon this level, and the cross cut from the shaft had not reached the ore when operations were suspended. The workings of the Queen have proved considerable of value for the Blue however, and it is fair to predict a satisfactory ore deposit on the third level when the latter has been opened out.

In appearance and quality the ore is like that of the mines of the Buffalo company, yielding 62½ per cent. metallic iron and from .100 to .112 in phosphorus. They are well equipped with machinery.

The mine has produced a total tonnage of 83,280, of which 44,140 was shipped from stock piles in 1895.

502 Opposite p. 114, vol. for 1887. From

STATISTICAL TABLE.

Showing the total number of gross tons of ore shipped from the iron mines of Michigan.

By Charles D. Lawton, M. E., commissioner of mineral statistics.

1870	1871	1872	1873	1874	1875	1876	1877	1878	1879	1880	1881	1882	1883	1884	1885	1886	1887	Totals.	Name of mine.
1,809	2,921	9,925	6,629	.....	750	456	3,307	4,674	2,737	2,063	.....	1,970	.....	.....	.....	.....	.....	37,241	New York Hematite. (Grand Central.)
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	10,860	24,686	35,546	Buffalo Iron Mining Company.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	5,140	.....	.....	Pioneer.
.....	4,787	7,633	1,949	.....	.....	.....	.....	.....	3,366	1,529	698	1,593	631	.....	.....	.....	.....	17,399	Bay State.
.....	.....	9,154	.....	.....	.....	.....	.....	2,103	10,869	.....	.....	.....	397	1,584	3,211	.....	.....	32,774	Manganese. (Negaunee.)
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	4,914	4,914	South Buffalo.
.....	.....	.....	.....	.....	.....	.....	.....	.....	941	13,142	31,284	41,200	805	25,000	38,466	46,692	50,471	274,971	Milwaukee.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	6,383	.....	1,200	7,583	Grand Rapids.

503 *Mineral Statistics.*

1898. (Page 177.)

Shipment of iron ore.

The following table will show the gross tons of ore produced by the different mines of the several Michigan districts:

Shipments of iron ore from Marquette range for the season of 1898 and for all years.

Name of mine.	1898.	Total.
Allen	.....	9,347
Bay State	.....	16,637
Blue	.....	92,637
Chicago	.....	9,012
Aetna	.....	1,091
Grand Rapids (Davis)	.....	110,596
Himrod	.....	2,065
Manganese	.....	6,359
Milwaukee	.....	375,451
N. Y. Hematite	.....	37,587
Orion	.....	504
Pioneer	.....	15,409
Queen	61,002	2,679,254
Schadt	.....	1,261
Wheeling	.....	10,555

Includes shipments from Buffalo, South Buffalo, Blue and Prince of Wales.

S. W. SHAULL, recalled on part of the defendants, further testified as follows:

Direct examination by Mr. HOYT:

Mr. HOYT:

504 Q. You remember yesterday noon, coming to Mr. Hayden and me and asking if we had any objection to the introduction of the testimony of Mr. Kaufman, don't you?

A. It seems to me I asked one or the other of you at some time whether you had any objection; whether yesterday or not——

Q. I told you we did object.

A. Yes.

Q. You stated that Mr. Kaufman was in town, didn't you?

A. I don't think so.

Q. You didn't?

A. No, I did not.

Q. He was in town, wasn't he?

A. Yes, sir; I saw him in town.

Q. You saw him here in the court room?

A. I did yesterday afternoon, yes, sir.

Q. You remember that I asked you to have Mr. Kaufman here, so we could cross-examine him, don't you?

A. No, sir, you did not.

Q. Do you mean that I did not say that we wanted to cross-examine Mr. Kaufman, and you said that Mr. Kaufman was here in town?

A. I mean to say just that, yes.

Q. You say that you did not say to me, in reply to my statement that we wanted to cross-examine Mr. Kaufman, that he was in town?

A. I remember asking you, Mr. Hoyt, or Mr. Hayden, whether you would object to his testimony; but I say you never said a word to me——

Q. Didn't I tell you that we wanted to cross-examine him?

A. You did not.

Q. Mr. Eldredge, didn't I tell you that I wanted to cross-examine him?

505 Mr. ELDREDGE: I don't remember that you did. I won't say you did not, but I have no recollection of that.

Q. You say, Mr. Shaull, that he was in town here, and in the court room yesterday afternoon all the afternoon?

A. I have already said he was.

Q. When did he leave?

A. I don't know.

Q. You remember that I asked you to bring up the question of the deposition while Mr. Kaufman was here, so we could have it settled by the court, and I could cross-examine him, don't you?

A. I remember you asked me two or three times to bring up the deposition; but I don't remember your saying a word about Mr. Kaufman being in town.

Q. You don't remember that I asked you yesterday whether Mr. Kaufman was here, so we could cross-examine him?

A. I don't remember any such thing, Mr. Hoyt.

Q. It was before the adjournment at noon, wasn't it, that we had this conversation?

A. I don't remember any such thing.

Q. I mean when we had the conversation about the Kaufman deposition?

A. I can't tell you.

Q. Will you swear that it was not at the adjournment at noon?

A. I wouldn't say, because I don't remember.

Q. You remember that Mr. Kaufman was here all yesterday afternoon?

A. I looked over there—I was examining a witness, and I hap-

pened to look up, I should say about three o'clock, and I saw him in the court room; that was the first intimation I had that he was here; I knew nothing about it after that and I did not see him again.

506 Q. Didn't you send for him to come here?

A. No, sir.

Q. Do you know who did send for him?

A. I do not.

Q. Do you know that somebody sent for him?

A. They must have, because I knew he was going to Hot Springs; his wife was ill and he was ill.

Q. Who do you think it was sent for him?

A. I presume somebody connected with the case must have done so; possibly Mr. Jones or Mr. Breitung; I don't know who did.

Q. You have had no conversation with anybody about sending for him, or getting him here?

A. Yes.

Q. Who did you converse with?

A. I conversed with Mr. Breitung.

Q. When did he leave?

A. I don't know when he left. I didn't see him leave; I don't know when he left.

Q. When did you know that he was away?

A. I don't know that he is away now. I don't know anything about it.

Judge BROWN: I met him on the way to the train this morning, and he said he was going to Hot Springs.

A. B. ELDREDGE, recalled for complainants, further testified as follows:

Direct examination by Mr. SHAULL:

I heard Mr. Hoyt ask you some questions while you were upon the stand as to Mr. Kaufman's presence in court, and as to either you or I having promised to produce Mr. Kaufman here for cross-examination. Mr. Hoyt didn't ask me to do that. I had a

507 conversation with Mr. Hayden just before adjournment yesterday noon, in which the mention of Mr. Kaufman's deposition came up and Mr. Hoyt said that he wouldn't consent to the reading of the deposition on account of insufficient notice, but I don't think he said anything whatever about Mr. Kaufman's cross-examination. I have no recollection of his saying anything of that kind, but he certainly didn't ask me to produce Mr. Kaufman for cross-examination.

Cross-examination by Mr. HOYT:

Q. Do you remember that I asked you if Mr. Kaufman was in town?

A. No, sir, I don't.

Q. Don't you remember that I did ask you if he was here, and that you said that he was, and you wanted to know whether we were going to object to the deposition because he was in town, and that I said that we had had no opportunity to cross-examine him?

A. That is exactly what I say. You may have said that you had had no opportunity to cross-examine him, I don't remember your saying that, but you may have, but you didn't request me to produce Mr. Kaufman for cross-examination.

Q. Don't you remember that I particularly asked you if he was in town and that you said he was?

A. I don't remember that; it is possible that you did.

Q. Don't you remember that you stated to me that he was in town?

A. It is possible, though I don't remember it.

Complainant's case.

JAMES H. HOYT, sworn on the part of the defendants, testified as follows:

508 Direct examination by Mr. HAYDEN:

I am sworn as a witness in this matter and my deposition taken. The deposition was taken on notice by complainants and subpœna issued to bring me in.

Q. You were asked by complainants' counsel whether you were director of the Pioneer Iron Co., and you said, "I think some time I was a director of the Pioneer Iron Co.," and then you were asked, what time, and you said, "I don't recollect definitely now without refreshing my recollection." You were asked further if you could state the years when you were such director, and you said, "I can't, for I'm director in some I should say 50 to 70 corporations, and it is very hard for me to remember the dates in regard to the time I am appointed, or of my service." I wish to ask you about the circumstances under which you gave that testimony, as to whether you had an opportunity to refresh your recollection about your service for the Pioneer Iron Co.?

Mr. ELDREDGE: That is objected to as incompetent, irrelevant and immaterial.

A. I got into town that morning and I was served with the notice by the constable about 5 or 10 minutes, I think, before I went up before the notary, so that I had no chance to refresh my recollection, but I have refreshed it since.

Q. What do you say now as to when you were a director?

A. I was elected as director of the Pioneer Iron Co. some time in the winter of 1890, just the day or month I don't recollect.

Q. Do you recollect whether it was in April, 1891?

Judge BROWN: We object to that. The books would be the best evidence of that, the records of the Pioneer Iron Co.

509 A. It was some time in the winter of 1890 I was elected a director first. I was also elected secretary of the company at that time.

I served as secretary something over a year. I have forgotten exactly the dates. I was re-elected a director in 1890, and I was re-elected a director of the company every year since. I was elected at the regular annual meeting of the Pioneer Iron Co. every year since that time.

Q. Have you stockholders had regular annual meetings?

Judge BROWN: We object to that; the records would be the best evidence.

A. They have had regular annual meetings and also some special meetings of the stockholders.

Q. At which you attended?

A. I attended, yes, sir.

Q. Do you know when Mr. Hale and Mr. Garretson were elected officers?

Judge BROWN: We object to that; the records will show.

A. They were elected in April, 1900, I think.

Q. Were you present at the election?

A. I wasn't present at that meeting; the board of directors of the company for the year 1891 consisted of W. G. Mather, J. H. Wade, E. R. Perkins, Mr. J. H. Shaedle, Fred A. Morse, Mr. F. P. Mills and myself. F. P. Mills was a resident Michigan director. The board consisted of those gentlemen, Mr. Mather being president of the company and Fred A. Morse secretary and treasurer until 1896, when Mr. Mills ceased his connection with the Pioneer Iron Co. and Mr. Peter White was elected a director in place of Mr. Mills. With that exception, the board continued the same until the annual meeting in April, 1900, when the board consisted of General Garret-
510 son, W. G. Mather, Mr. Samuel Mather, Mr. Perkins, Mr. White, Mr. Hale and myself.

Q. I wish to ask you about this request made by you of Mr. Shaull or Mr. Eldredge in court yesterday, regarding the deposition of N. M. Kaufman, as to what you stated in regard to it.

A. I requested either Mr. Eldredge or Mr. Shaull to have Mr. Kaufman here for cross-examination.

Cross-examination by Mr. PENNINGTON:

Q. How did you refresh your recollection?

A. I refreshed my recollection by looking over some of my own papers and by looking over some of the books of the Pioneer Iron Co. in Cleveland last Saturday.

Q. What books of the Pioneer Iron Co. did you look over?

A. I looked over some record books.

Q. What record books?

A. Record books of the stockholders' and directors' meetings.

Q. In your office?

A. In my office, yes, sir.

As to how long they have been in my office I cannot tell you. I first saw them there last Saturday. Mr. Hayden produced the books to me last Saturday at my office. They were probably in the possession of my office and he got them. Mr. Hayden had, I think, one of the stock books of the Pioneer Iron Co.; I think he got it from my office, very likely the books may have been there for some months. I don't know of my own knowledge. I think there were two stock books. I didn't examine the stock books. Two stock books and two record books; I didn't look at the stock books. I don't know whether Mr. Hayden examined the stock books;
511 he didn't in my presence. I am sure I don't know why he produced them to me, they were lying there on the table.

I am sure that I cannot tell you how many books I have got in my office of the Pioneer Iron Co. I didn't bring any of these books here with me when I came up. I don't know where they are now. I left them in my office last Saturday.

I was a director in the Iron Cliffs Co. in May, 1891, not an officer. I was an officer or director of the Pioneer Iron Co. at that time. I don't recollect that the Iron Cliffs Co. issued a circular at that time to the stockholders of the company.

Q. You remember they issued a circular to the stockholders of the Iron Cliffs Co.?

A. You asked me about that before; I have no recollection.

Q. When you were refreshing your recollection the last time for the purpose of testifying here, didn't you at that time remember that you had been interrogated on this other matter by me in Cleveland?

Mr. HAYDEN: That is objected to as irrelevant.

A. I didn't think anything about it. I would be glad to refresh my recollection now.

Q. I will try and aid you. Do you remember about the month of May, together with Wm. G. Mather, representing the Iron Cliffs Co., having issued, about February 19, 1891, a circular to the stockholders of the Iron Cliffs Co., proposing an exchange of their stock for the stock of the Cleveland Cliffs Co. to be organized or which you were intending to organize in West Virginia?

A. I have a recollection of some such circular.
I think the circular you show me is the circular that was issued.
The Iron Cliffs Co. owns some of the stock of the Pioneer
512 Iron Co. I haven't examined that part of the circular which states that the Iron Cliffs Co. owned the stock of the Pioneer Iron Co. I have no doubt that statement was true if we made it at that time. I think that was true, though not of record. They didn't own it of record, the equitable owner of it.

Re-direct examination by Mr. HAYDEN:

The Iron Cliffs Co. does not own it all now. Outside of the Iron Cliffs Co., Mr. Garretson owns 50 shares of stock, Mr. Hale owns 960 shares, Mr. Peter White owns 10 shares, I own 10 shares, Mr. Perkins owns 10, Mr. Wade, I think, owns 10, Mr. Samuel Mather 10, and I think there are some other scattering shares owned by other people. I don't exactly recollect. Mr. Garretson and Mr. Hale have owned their stock something like two or three years, I think. I am not quite sure of that, but the other gentlemen have owned their stock, I think, for 8 or 9 years.

Re-cross examination by Mr. PENNINGTON:

Q. Then these gentlemen whom you have named as owning shares of stock in this company have procured the same and became the owners since the issuing of this circular in 1891?
A. No, I don't think so; I think that some of the stock was owned by some of the gentlemen I have named prior to the issuing of the circular, but my recollection is not definite about that.

Mr. PENNINGTON: I desire to offer this circular in evidence.
Mr. HAYDEN: It is objected to as irrelevant.
Received and marked Complainants' Exhibit J 2.
Said Exhibit J 2 is dated Cleveland, Feb. 19, 1891, and
513 signed Wm. G. Mather and James H. Hoyt, and sets forth plans for the consolidation or combination of the Cleveland Iron Mining Company and the Iron Cliffs Company and stated substantially that the advantages of the union were carefully considered by the stockholders of the Cleveland Company holding more than three-fifths of its stock had induced them to purchase the majority of the stock of the Iron Cliffs Company at a better price than they otherwise would have given, with the end in view of uniting the properties and interests on some feasible plan, among which would be the following:
Their properties are contiguous.
A single management could better sell the ore.
That competition between the two companies would be eliminated and its influence increased.
In view of this, those holding the requisite amount of stock in

both companies have determined to adopt one or the other of the consolidation plans hereafter stated, together with the advantages and objections for or against each. The properties are to enter the consolidation on the basis of the market price for the stock respectively at the time of the purchase of control, as follows:

Cleveland Company	$2,000,000.00
Iron Cliffs Company	2,500,000.00

"After careful examination of the properties of the Iron Cliffs Company, our people felt justified in paying the price asked for the controlling interest. It was, however, in their judgment a maximum price, much more than any of them would have been able to pay for less than the control."

First Consolidation under the Michigan Laws.

Citing the Michigan statute permitting a consolidation of mining companies.

First. Ownership or control of three-fifths of the stock in each company favoring consolidation.

514 Second. A meeting of the respective companies; enumerating the requisite steps to be taken at such meeting. It then cites the provisions prohibiting the capital of the consolidating company from exceeding $2,500,000 and proceeds to say that the minority stockholders of each company even though opposed to the consolidation, and vote against it are absolutely bound; and if they do not return their stock for cancellation within thirty days after actual notice of the resolution calling in the stock for cancellation, "his stock can be absolutely cancelled and wiped out by the consolidated company."

This plan of consolidation would be entirely effective to accomplish the purposes desired by our people and can be absolutely carried out to the extent indicated in spite of any objection which can be urged by the minority stockholders. It then proceeds to point out that each stockholder in the constituent companies after consolidation will receive consolidated stock for his stock so surrendered, it points out that the aggregate property of both companies is more than $2,500,000; also that both companies combined, own in excess of 500,000 acres of land, which is forbidden to be owned by one company in Michigan, by law. "Of course, by the appointment of trustees who could hold the property in trust for the consolidated company, the most objectionable feature of this requirement of the statute could, perhaps, be avoided; but not without considerable circumlocution and some difficulty."

Third. The Iron Cliffs Company has a valuable privilege which would, necessarily, be wiped out by the consolidation. By special

legislation, procured by Mr. Tilden, the Iron Cliffs Company now has the peculiar right of owning stock in sub-companies. Under this special legislation it owns the stock of the Excelsior and
515 the Pioneer Companies. This right, on consolidation, would necessarily be taken away, as the new corporation could only exercise and be possessed of the privilege allowed to a newly formed corporation under the Michigan statute. It then proceeds to point out that the full maximum capital would have to be issued in the consolidated company, which would prevent an increase of capital stock, as the stockholders would never permit the combined companies to be capitalized at less than the maximum amount allowed by Michigan law, and would be deprived of the advantages to be derived from further combination or acquisition, and as this is a day of combinations it would be better to obtain a more elastic organization, and then points out that it would not be well to expand by using its cash assets for that purpose. Nevertheless, in spite of the objections, the advantages of consolidations are so great in comparison with separate operation, this plan will doubtless be adopted, "*in event that the minority stockholders withhold their consent to the adoption of the second plan hereinafter outlined.*"

Second.

Proposes the incorporation of a new company under the laws of West Virginia, with a capital stock of $5,000,000, which company will hold in its treasury the capital stock of the Cleveland Company and the Iron Cliffs Company to the stockholders of each of which would be issued, on a basis of $2,000,000 valuation for the Cleveland and $2,500,000 valuation for the Iron Cliffs Company, new stock at par, representing precisely the market value of the stock held by them in each company at the date of the purchase of the control of the Iron Cliffs stock by the Cleveland parties."

Under the West Virginia law this organization could be perfected in such a way as to give the parent company the express
516 right by statute to hold this stock. It could operate under lease one or both furnaces now operated by the Iron Cliffs Company. The main office would be in Cleveland. The same board of directors could serve in all three companies; their properties could be unitedly managed, their products economically sold, and supplies and materials advantageously purchased.

Advantages of the West Virginia corporation are:

1. There would be no liability on the stock.
2. Organization would be comparatively inexpensive.
3. Nominal taxes of West Virginia.
4. Meetings of directors and stockholders can be held out of the State.
5. *No statement of condition or lists of stockholders need be furnished.*
6. It could be organized more quickly, economically and advantageously than the two companies could be consolidated.

7. The parent company would thus have $500,000.00 treasury stock and sub-companies could be organized. This would leave opportunities for acquiring new properties, without spending cash surplus of the parent company or interfering with regular dividends, and this opportunity could be improved.

8. If the stock represented by yourself and Mr. Green should approve of this plan and join us in it, our people would favor its immediate adoption, even though the small balance of stock not now held by you or us should not come in, and any future acquisitions of property and other advantages, in the way of growth and development, would be acquired by the parent company, and would be solely participated in, of course, by its stockholders, and any small, fractious minority stockholders of the two companies not coming in and exchanging their stock would neither share in any of these benefits or accretions nor would be of sufficient importance to impair the efficacy of the plan.

517 "As stated to you, at our interview in New York, the leading properties on the Menominee range, known as the Schlesinger mines, will be operated harmoniously under some plan of combination substantially like the second plan outlined above; the properties of the Vermilion range are, practically, in the control of one or two companies and the Chicago and Minnesota Ore Company, owning the stock of several sub-companies, is organized on similar lines with our proposed plan; the properties on the Gogebic range are already controlled by the Gogebic Consolidated mines, *under a similar organization to our second plan. In short, most of the mining companies in the Lake Superior region are now grouping into powerful organizations, and, if we wish to successfully compete with them, as we must in order to pay adequate dividends to our stockholders, it will be necessary for us to pursue a somewhat similar course.*

Re-direct examination by Mr. HAYDEN:

Q. Were there directors' meetings held of the Pioneer Iron Company from the time you became connected with it in 1890 and 1891?

Judge BROWN: To that we object, the record will be the best evidence.

A. Yes, sir. There were frequent meetings; annual meetings were always held when the officers were elected, and there were several special meetings at all of which business was transacted.

Q. I ask you as to those directors' meetings at which you were present and that you know about?

A. Yes, sir.

Q. I am asking you for your own knowledge.

A. Yes, sir, there were—I was present at nearly all, some of them I was not present at.

518 Q. They held numerous business meetings of the directors at which you were present?

A. Yes, sir, at least once a year, and sometimes two or three times a year during that interval at which business was transacted, and important business also.

Re-cross-examination by Mr. PENNINGTON:

Q. You have testified as to the ownership of the stock of the Pioneer Iron Company at the date of the issuing of this circular; how many years prior to that time did the same condition of ownership—how long had it existed?

A. That I cannot say; the stock of the Pioneer Iron Co. was held by W. G. Mather, the larger proportion of it, as trustee, for a good many years.

Q. How many years would you say W. G. Mather had that as trustee?

A. It would be impossible for me to state.

Q. For 10 or 15 years?

A. Oh, no, sir.

Q. How many years prior to the date of the circular?

A. I should say something less than a year he had held it prior to the date of that circular.

Q. Who held it in trust prior to Mr. Mather's holding it?

A. My recollection is that it was some of it held in trust by Mr. Hewitt.

I think he held it in trust for a great many years. I cannot say how many years. My recollection is that he held it and voted it afterwards.

Re-direct examination by Mr. HAYDEN:

Q. Held it how?

A. Held it a proportion of the stock and voted it after the time of the mortgage, that is my recollection.

519 GEORGE HAYDEN, sworn on the part of the defendants, testified as follows:

Direct examination by Mr. HOYT:

I heard the conversation we had yesterday in regard to the N. M. Kaufman deposition. I think Mr. Shaull was a party to that conversation. My recollection is what conversation I took part in was this: I requested Mr. Shaull to bring up the matter of the Kaufman deposition, since I had just heard that his deposition had been taken, that we had had no opportunity to cross-examine and that we objected to that deposition and we wanted to cross-examine Mr. Kaufman. Mr. Shaull understood he was here, and knew he was

here; that was stated. The conversation took place upon the fact that Mr. Kaufman was here; both parties knew it. My recollection is that what you said was that we wished to cross-examine Mr. Kaufman, and that you desired if Mr. Kaufman's testimony was to be put in here at all we wanted to cross-examine him. I remember your saying when you learned that he was in town, that it would be very easy to cross-examine him. I remember that you asked Mr. Shaull or Mr. Eldredge, one or the other of them, to put Mr. Kaufman on the stand so that we could cross-examine him. I cannot remember that any reply was made to that, for the reason that I asked, I renewed this request of Mr. Shaull two or three times during yesterday to have this matter of the deposition brought up so that we could settle that. On each occasion that I remember Mr. Shaull made no statement as to what he would do.

Q. There is attached to this deposition a letter to the commissioner or notary. Will you please state whose letter that is?

A. That is my letter. I wrote that and sent it. I would like to explain the circumstances under which this notice
520 was given. I was at Lansing at that time. That notice was given me by Mr. Shaull, which was a couple of days before that letter was written, and the letter was written on the day before the testimony was fixed to be taken at Chicago, and I was at Cleveland, Ohio, at the time I wrote that letter, but I was at Lansing, I think, two days before when that notice was served upon me by Mr. Shaull in my room. I was engaged there in the matter before the attorney general in which I was required to put in a brief upon an argument we had had before him.

That matter was a matter of the *quo warranto* brought by the attorney general in the name of the State, on the relation of Edward N. Breitung, in an attempt to forfeit the charter of the Pioneer Iron Co. Mr. Hanchett, Mr. Pennington, Mr. Brown and Mr. Shaull were all at Lansing at the hearing. At the hearing it was agreed that briefs should be put in and I was making a brief until I went to Cleveland. In the same transaction I was obliged to be back to Lansing again on Tuesday morning. At the time the notice was served I said to Mr. Shaull that his notice was insufficient, I couldn't possibly be there to take part in that examination of Mr. Kaufman at Chicago. I further said to him that he ought to know that from the circumstances that it was impossible.

Q. I want to call your attention to a part of the deposition of Mr. Kaufman, this *ex parte* deposition on page 8:

"Q. Are you acquainted with George W. Hayden?

"A. I am.

"Q. Solicitor for the defendants in this case?

"A. Yes, sir.

"Q. Did you have some talk with him at any time as to his acquiring a one-half interest in the Arctic Iron Co.?

"A. I had a talk with him once when his company were negotiating with Wm. P. Healy.

"Q. Did he represent the Iron Cliffs Co.?

"A. I always understood he did.

521 "Q. Has he not made purchases for them which they have accepted—stock or lands?

"A. Well, he has made purchases of lands and other things that the Iron Cliffs Co. has paid for.

"Q. Was it generally understood that he was representing them?

"A. Yes, sir.

"Q. When did this conversation take place?

"A. Well, I should judge some two or three years ago; just before the purchase of their one-half interest in the Arctic Iron Company.

"Q. And before this litigation arose?

"A. Yes, sir.

"Q. What was said between you, if anything, relative to the existence of the old Pioneer Iron Co. lease and relative to the validity of this lease? Just give me the conversation as near as you can remember it.

"A. Well, Mr. Hayden came into my office one day at the bank and told me that he was negotiating for a one-half interest in the Arctic Iron Co.

"Q. That was with Wm. P. Healy?

"A. Yes, sir. And that he had an option on it for $125,000, and he did not want to pay that much money for it; it was rather high; and he said 'If you should see Mr. Healy at Chicago, tell him I can't pay him that amount of money for this half interest in the Arctic Iron Co. on account of this 99 year lease.' I told him that I thought saying this to Mr. Healy would not affect his mind in regard to the price, or that his stock would be worth any less on account of the 99 year lease; that Mr. Healy, as well as myself, knew that the Pioneer Iron Co. was dead, and the 99 year lease of no effect. And I said to him, 'George, I believe you think the same thing.' 'Well,' he said, 'I do, but I want to use it as a sort of club on Mr. Healy.'"

Now what have you to say to having any such conversation with Mr. Kaufman as to whether that statement is true or not?

A. A part of that statement is true and part of it is absolutely false. I did have a conversation with Mr. Kaufman at the time Mr. Mather was negotiating to buy a half interest in the Arctic Iron Co. stock owned by Wm. P. Healy and his wife, and I did

522 say to Mr. Kaufman in Marquette, probably about that time, about the beginning of 1899, and did tell him that I had an option on Mr. Healy's stock, half of the Arctic Iron Company's stock, and I think I did also ask him if he could assist in any way in inducing a sale by Mr. Healy to Mr. Mather. As to that part of the conversation referring to the 99 year lease, it is absolutely untrue. There never was any suggestion or statement by Mr. Kaufman nor by Mr. Healy then or before that the Pioneer Iron Co. was dead. There was never any claim made that I ever heard of that the Pioneer Iron Co. was dead, and the statement by Mr. Kaufman as to

what I said to him to the effect that I knew it, or something like that, I never made it in that form or in any other form whatever.

Cross-examination by Mr. SHAULL:

We were at Lansing before the attorney general on the Wednesday previous to this letter, which is dated on the 10th (Sunday). We had a hearing before the judiciary committee of the senate in the forenoon, and before the attorney general in the afternoon of the same day. We got through with the hearing before the attorney general about six o'clock in the afternoon. I don't remember where I went from there. I don't know whether I was in my room at the Downey house on that day or not, but I know that you came into my room unbidden, with a paper, and shoved it into my hands and went out.

Q. Did I not lay that paper down on the dresser in your room and say, "Mr. Hayden, here is a paper for you?" And did you not look at it and say, "All right;" and did I not then turn around and go out of your room, without a single word of conversation except that which I have mentioned?

523 A. If you are referring to the notice; if the paper you speak of is the paper which constituted your notice on me to take this testimony of N. M. Kaufman in Chicago on the following Monday, then I will say that as soon as I looked at that paper I said to you: "You know perfectly well that I cannot be there on Monday to take that testimony, and I don't propose to be there. Your notice is insufficient and you ought not to serve me with such a notice, under the circumstances here."

Q. Do you mean to tell me that you said such words to me in Lansing?

A. I do mean to say exactly that, sir. I think you know quite well that I said it, too.

Q. Why do you say that I knew quite well that you could not go to Chicago on the next Monday, four or five days later, to take some testimony?

A. Because you were engaged there on the same business yourself.

Q. What business were you engaged thereon, Mr. Hayden, after that argument?

A. You may have been engaged in the business of bribing senators; but I was engaged in the business of making a brief for the attorney general.

Q. Did you not have two weeks in which to make a brief?

A. Not as I understood it, sir.

Q. Did not the attorney general allow us, at the conclusion of the argument, two weeks in which to make that brief, in the presence of Judge Brown, Mr. Hanchett and myself?

A. I understood that we were to make it in ten days; and I set about making it immediately.

Q. Did not the judiciary committee of the senate give us ten days in which to make a brief before them, and was not the reason why the attorney general gave us two weeks because the ju-
524 diciary committee had given us ten days, and ten days to reply?

A. My recollection of that is that on the conclusion of the argument before the attorney general that Wednesday I said to him that I would like to have him dispose of it as soon as possible, because his matter might stand in the way of the trial of the case in the circuit court for the county of Marquette, in chancery, which you were trying to help out with your proceeding in the name of the State, and that I thought the action of the attorney general ought not to delay us; and that the sooner it could be disposed of the better; and that I would make my brief at the very earliest opportunity, no matter how long a time he would give, and hand it to him, for the reason that I have given.

Q. Did you or did you not understand that you had two weeks in which to make that brief?

A. No, sir, I did not so understand it.

Q. How long did the attorney general announce he would give you to make a brief?

A. Why, he may have said a week or ten days, or possibly he said two weeks, although I did not so understand it. But for the reason which I have given, which I explained to the attorney general, and as to which I made a request upon him, I consider I had no time whatever to spare until I furnished him with a brief; and I proceeded to make it.

Q. Was that the reason you could not be in Chicago, or go there on the following Monday?

A. That and the business at Cleveland connected with it were the reasons, yes.

Q. When did you write that letter—on the 10th, the time when it is dated?

A. I suppose I did; it was on Sunday; I presume it was the proper date. It was the Sunday before this examination.

525 Q. Will you look at the annexed certificate attached to the deposition, and tell me whether your letter arrived in Chicago the day after it was written?

A. I don't know anything about the time that letter arrived. I wired the notary public on Sunday that I had sent him this letter, that I could not be present at that examination. Whether he got the letter or whether he got the message I only know by seeing the letter attached to this deposition.

Q. How long does it take to go to Chicago from Cleveland by the ordinarily traveled route?

A. I suppose you could go in one day or one night.

Q. About twelve hours, doesn't it? Why didn't you go over Sunday night instead of writing?

A. I think I have already explained to you that the business in

hand prevented me from going and doing that. That I cannot do two things at once. The very matter about which I reproached you when I told you you had no business to serve a notice on me to take me to Chicago during that time, in order to get me out of town and away from Lansing.

Q. I move to strike out that answer as not responsive. Did I have anything to do with taking you to Cleveland on the business that you went to Cleveland on?

A. I am sure I don't know whether you did or not. Not that I know of. Your efforts in Lansing, however, compelled me to do the business. To that extent you had a good deal to do with it.

Q. My efforts at Lansing, Mr. Hayden, were directed, were they not, to defeating a bill which you had introduced into the legislature.

A. I don't know; you might have abandoned the proceedings before the attorney general for all I know. If you had, then your efforts were directed at the senate. What you were doing I don't know.

526 Q. You say you had an interview, a conversation, with Mr. Kaufman, some time in 1891, on the cars——

A. I did not say I had a conversation with Mr. Kaufman in 1891.

Q. When was it?

A. It was at the time Mr. Mather purchased the stock from Mr. Healy of the Arctic Iron Co., half of the stock; it was about the beginning of 1889. Previous to that time Mr. Healy and the Breitung estate owned the whole business, the Arctic Iron Co.

Q. Had your attention been called to that conversation from that time until you saw this deposition?

A. It has not.

Q. Has anything occurred to refresh your recollection upon it at this time?

A. Yes. Do you want to know what it was?

A. No, i have not asked you what it was.

Mr. HOYT: You may state, Mr. Hayden.

Mr. SHAULL: Just a moment. I am cross-examining now.

Q. Did you have any further conversations with Mr. Kaufman about it?

A. Oh, I had a number of conversations with Mr. Kaufman during that period of time. Do you want to know what they were?

Q. No. Did you ever tell Mr. Kaufman at any of the conversations that you knew the 99 year lease was not worth anything.

A. Did I ever tell him?

Q. Yes?

A. I have said emphatically, no; I never told him any such thing.

Q. Did you ever tell him that you didn't consider it worth anything?

527 A. No, I never said that.

Q. Did you have any conversation about it?

A. About what?

Q. About the 99 year lease?

A. Yes, very likely I have.

Q. When?

A. Well, it may have been then; probably subsequently after the Arctic Iron Co. sold the stock.

Q. At that time?

A. If I said it to him, I said it to him at an interview at some time that I talked to him about the lease. But I never said these things he says I said. You understand that.

Q. You do not fix the time or place when you had such a conversation?

Q. What do you mean by "such a conversation"?

Q. In relation to the 99 year lease.

A. No, I cannot fix definitely the time. But I have had at least a dozen conversations with him since this suit was commenced, in which he has been trying to——

Q. I am asking about some time before the suit was commenced?

A. Regarding the 99-year lease?

Q. Yes.

A. No, I have no recollection of talking with Mr. Kaufman about the 99 year lease before this suit was commenced. I do not say that the 99 year lease was never mentioned in any such conversation, but I have no recollection of any.

Mr. HOYT:

Q. You said you had a means of refreshing your recollection; what was that?

A. Why, it was the statement of Mr. Kaufman that I ever talked with him to the effect that I had stated that; which was so
528 flagrant a falsehood that I couldn't help but remember it.

Q. That is since you saw the deposition?

A. Since I saw the deposition, on yesterday. I never knew that Mr. Kaufman had given his deposition until yesterday.

J. L. MCCLEAR, sworn on the part of the defendants, testified as follows:

Direct examination by Mr. HAYDEN:

I know the Pioneer and Arctic Iron Companies. I acted as their agent for granting options. I was appointed as such agent, I think, in the summer of 1889. I received my notification from Mr. Healy. That was all the notice I remember of receiving now. I received a letter, what decision the companies had made in regard to the appointment of an agent. I have not got the letter. When I left Negaunee I left it in the office, I suppose. I looked for it this morning, but couldn't find it.

I acted as such agent until October, 1896. I received pay for acting as agent for both companies. I think from the Arctic Iron Co. I received pay every month from Mr. Healy, and as I remember, from the Pioneer I received pay once a year; each company paid the same amount.

I acted in the granting of options for these two companies. I have all, or nearly all of the options, or duplicates of them. There were duplicates made in all cases, as I remember it. One copy was given to the party taking the option, and one kept by me. When they gave up the option, or quit working on the land, they would return the options to me in most all cases. There is one forfeited. I have never looked these over.

529 Here is one marked "Arctic Iron Company," and "Pioneer Iron Company," to John Stecker, given November 8, 1890, and expired Feb. 6, 1891, marked forfeited. All these options were executed upon blanks provided for that purpose. I think I received the blanks from the Mining Journal office here in Marquette.

The letter I received from Mr. Healy notifying me said that the Arctic and Pioneer had agreed to appoint me as their agent, and they were having blanks prepared which would be sent to me, and that they would pay half the salary, and the Pioneer Iron Co. half. I dealt with the Pioneer Iron Co. for its half, received pay from the Pioneer Iron Co.

The option you show me, dated Oct. 12, 1889, between the Pioneer Iron Co. and the Arctic Iron Co., two corporations organized under the laws of the State of Michigan, parties of the first part, and Alexander Maitland of Negaunee, Mich., and N. M. Kaufman of Marquette, Mich., parties of the second part, covers those portions of the S. W. ¼ of the N. E. ¼, and the S. E. ¼ of the S. E. ¼ of sec. 6, where the ores and minerals are owned jointly by said parties of the first part. It appears to be signed by J. L. McClear, agent, and by Alexander Maitland and N. M. Kaufman. That is the original option; as I remember it now, that was the first one that was given out, and was written by Mr. Healy himself. That is Mr. Healy's handwriting, and he sent it to me. The signature is my writing, and the rest of the writing is Mr. Healy's. There was an extension. The first extension is this: "This option is hereby extended three months from January 12, 1890. J. L. McClear, agent."

The next is: "This option is hereby extended to October 12, 1890. J. L. McClear, agent Pioneer & Arctic Iron Companies."

530 Those are the original entries made by me upon the back of the option, in my handwriting. I don't remember in regard to that particular one, how I came to make these indorsements at whose request. In the general routine of business these options were granted for three months, and if they went on and complied with the terms of the option and performed the labor they were required to, for three months, and requested an extension at that time, an extension was granted for three months longer. If

they continued in that way, I could grant an option for three months further than that, and so on, as long as they continued the work, not to exceed nine months, as I remember it—not to exceed three extensions. As I remember it, the request from the two companies who made me agent was that the extensions should not exceed nine months. I don't think I ever extended an option without the parties did come and request it, and I can safely say that I was requested to make these extensions.

There is attached to this option a form of lease. In this case, it seems to be filled out in all the material parts except the signatures. I had no authority to fix that part of it. The companies themselves would execute the lease. I merely had authority to issue the options and gave a certain form of lease to be issued if they complied with the option and made the request, then the lease would be signed by the companies.

Mr. HAYDEN: I offer this original paper in evidence with the indorsements, and blank form of lease attached.

Mr. ELDREDGE: That is objected to as immaterial and irrelevant.

Paper marked Exhibit 22, and is as follows:

DEF'TS' EX. 22.

This agreement made this twelfth day of October, 1889, between the PIONEER IRON COMPANY and the ARCTIC IRON COMPANY,
531 two corporations organized under the laws of Michigan, parties of the first part, and Alexander Maitland of Negaunee, Michigan, and N. M. Kaufman of Marquette, Michigan, parties of the second part,

Witnesseth: That the parties of the second part *is* hereby granted the privilege of entering upon and exploring for iron ore for three months from and after the date hereof upon the following described land, to-wit: Those portions of the southwest quarter of northeast quarter and southeast quarter of the southeast quarter of section six where the ores and minerals are jointly owned by said parties of the first part, in township forty-seven north, of range twenty-six west, in the county of Marquette and State of Michigan, on condition that said parties of the second part shall commence explorations for iron ore on said lands within ten days from the date hereof, and shall keep not less than three men at work making explorations on said land during the term of this option, except when prevented by the weather, and if the said parties of the second — shall discover and prove up by such explorations at least ten thousand tons of merchantable iron ore on said lands, on or before the expiration of said three months, then said parties of the second part shall be entitled to a license to mine ore on said lands from said parties of the first part, their successors and assigns, similar in all respects to the an-

nexed unexecuted license marked "Exhibit A," at any time before the expiration of this option by making written application at the office of J. L. McClear, agent of said parties of the first part, in the city of Negaunee, Michigan, and at the same time paying to said J. L. McClear, agent, for the use of said parties of the first part, one thousand dollars, being three months' ground rent on said lands. Such ground rent shall commence to run from and after the date of making such written application for a mining license. The
532 said parties of the first part shall, within thirty days after said written application and ground rent are so received, execute and deliver to said parties of the second part a license as aforesaid to mine iron ore on said lands, but said parties of the second part shall not be entitled to such mining license unless said quantity of iron ore is discovered and said ground rent is paid before the expiration of said three months.

Each of the said parties of the first part shall be liable for its own default, and not for the default of each other.

The actual possession of said lands remains in said parties of the first part; said parties of the second part have only the privilege of searching therein for iron ore, and will not be entitled to any notice to quit under any circumstances whatsoever. On the termination of this agreement the parties of the second part shall cease explorations and remove from said lands unless they have complied with all the foregoing terms and conditions which entitle said party of the second part to a license as aforesaid. The object of the parties of the first part in entering into this agreement is, that the above described lands may be speedily explored, and therefore time is declared to be the very essence of this contract.

No extension of this option shall be valid unless in writing and signed by the parties of the first part, or their authorized agent.

No option shall be issued by said agent for more than one forty acre tract, except where fractional portions of a forty or forties adjoin such forty acre tract, in which case such fractional portion or portions may be included in such option. Renewals of this option may be given by said agent from time to time. Each renewal shall not exceed three months and the total of such renewals shall not exceed one year unless consented to in writing by each of the
533 resident general agents of the Pioneer Iron Company and Arctic Iron Company. Both of said general agents shall have power by writing under their hands to alter the terms of this option. Said agent has no power to alter any part of this option or annexed blank license. Where the surface is owned by third parties no entry shall be made on such land by said parties of the second part until consent is obtained from such surface owner or owners, or until said parties of the second part shall obtain authority of law to make such entry, and all damages which may be incurred by such surface owner or owners by reason of such explorations shall be wholly borne by said parties of the second part.

In witness whereof the parties hereto have set their hands the day and year first above written.

PIONEER IRON COMPANY,
ARCTIC IRON COMPANY,
By J. L. McCLEAR, *Agent.*
N. M. KAUFMAN.
A. MAITLAND.

This option is hereby extended three months from Jan. 12th, 1890.

J. L. McCLEAR, *Agent.*

This option is hereby extended three months from April 12th, 1890.

J. L. McCLEAR,
Agent Pioneer & Arctic Iron Co.

This option is hereby extended to Oct. 12th, 1890.

J. L. McCLEAR,
Agent Pioneer & Arctic Iron Co.

Witness continues:

That option you show me is an option bearing date Oct. 12, 1889, and running to Alexander Maitland of Negaunee, Mich., and
534 N. M. Kaufman of Marquette, and covering apparently the same. That is probably a duplicate. I think that is a copy. The option you show me is another option for precisely the same blank form, dated October 12, 1889, between the same companies, parties of the first part, and Alexander Maitland and William P. Healy, and covering the S. E. ¼ of the N. W. ¼ of section 6, and all that portion of the N. E. ¼ of the S. W. ¼ of said section 6, lying north of the county road. It is signed by J. L. McClear, agent, and by A. Maitland and William P. Healy. It was executed as the original. Upon the back of this option are the following extensions, signed by J. L. McClear, agent of the Pioneer Iron Co. and the Arctic Iron Co. The first one: "This option is hereby extended three months from Jan. 12, 1890." The second is: "This option is hereby extended three months from April 12, 1890." The third is: "This option is hereby extended to October 12, 1890." Those are the original indorsements by me as agent, made in just the same way as the previous one testified to, and the option is in the same form as the other.

Q. Now I call your attention to this bundle of options, and will refer to them by their dates and names to whom issued, and ask you if they are identical in form with the first one offered in evidence, and are all between the Pioneer Iron Co. and the Arctic Iron Co. as parties of the first part, and several persons whose names appear as the optionee, or the person to whom given. One, the Pioneer Iron Co. to Thomas Tracy, dated Oct. 28, 1890, covering the N. E. ¼ of the N. W. ¼ of section 3, 47–26. Another

one dated January 6, 1892, executed by the Pioneer and Arctic Iron Companies, to Richard H. Taylor. I guess that one was never signed. Another one dated May 22, 1891, between the Pioneer and Arctic Iron Companies and Matthew Van Orden, signed as before. Another dated Nov. 18, 1889,
535 given by the Pioneer and Arctic and Pioneer Iron Companies to A. B. Eldredge, covering the N. W. ¼ of the N. W. ¼ of sec. 6, and a portion of the N. E. ¼ of the N. W. ¼, belonging to the said party of the first part, in section 6, 47–26, duly executed in the same way as before. It bears on the back of it an indorsement as follows: "By agreement of the general agents of the Pioneer and Arctic Iron Companies the within option is extended for three months from February 18, 1890." On this option to Mr. Eldredge, I ask you if that is the original entry, signed by the parties whose names appear to be signed there, right opposite the signatures to the option?

A. Yes, it is signed by both the parties.

Q. "We hereby agree to the alteration in the annexed unexecuted license as to the amount of royalty to be paid by said party of the second part." Signed W. P. Healy, general agent of the Arctic Iron Co. and A. Maitland, general agent of the Pioneer Iron Co.

A. Yes, there was a little change in the lease; they granted it to Mr. Eldredge for some reason; I don't know why.

Q. Took it out of the agent's hands for that purpose?

A. Yes.

The option you show me, dated May 26, 1891, was given by the same companies to Prosper Roberts, signed in the same way by myself as agent, to Mr. Roberts. All these options are specified for three months from the date, and extended after that if they worked longer than that. That one you show me, dated Feb. 14, 1891, between the Pioneer and Arctic Iron Companies and Joseph Richardson, is not signed. That is the one I kept, and it was not signed. I kept my record on there of the extensions, you will find filled in there.

Here is another option, dated Aug. 12, 1891, between the
536 Pioneer and Arctic Iron Companies and Joseph Croze, running three months, as they all do, covering the S. W. ¼ of the N. W. ¼ of sec. 3, 47–26. It is signed Pioneer Iron Co. and Arctic Iron Co., by J. L. McClear, agent. That is the signature upon all these options. They are the same in every one.

Here is another one, dated Oct. 23, 1889, given by the Pioneer and Arctic Iron Companies to Thomas Kennedy, for three months, covering the N. W. ¼ of the N. W. ¼ of sec. 4, signed by the Pioneer Iron Co. and the Arctic Iron Co. by J. L. McClear, agent, and Thomas Knuckey, and is extended by a number of extensions to Oct. 23, 1890.

Another one dated Feb'y 19, 1891, given by the two companies mentioned to Joseph Loranger and George Corton for three months,

covering the S. W. ¼ of the N. E. ¼ of sec. 32, and signed by the two companies by J. L. McClear, agent, and by Loranger and Corton.

Another one, dated May, 1890, between these two iron companies of the first *parties*, and Augustus C. McKenzie, of Negaunee, Mich., and William P. Healy and N. M. Kaufman, and covers the N. E. ¼ of the S. E. ¼ of sec. 5, 47–26. It is signed by the two companies by J. L. McClear, agent, and by McKenzie. That is probably my copy. The extensions on the back of this option are signed by myself as agent of the two companies, extending this option by five different extensions, to Nov. 1, 1891.

They spent a great deal of money and did a great deal of work down back of Corbett's house, and they were granting extensions for a longer time, they were spending a great deal of money there.

Here is another one, dated Oct. 28, 1890, between these two iron companies and Thomas Tracy. Most of the parties taking these options go on and do some work in each case. There may
537 have been one or two taken on section 1 and section 2, where they didn't work much, and I don't know as they worked at all. I know a few of them took options and didn't do anything, but on these sections, 4, 5 and 6, I think work was done on all of them.

Here is another one, dated Nov. 6, 1890, between the two iron companies and John Stecker, for three months, covering the S. W. ¼ of the N. W. ¼ of sec. 3, signed by the two iron companies, by myself as agent, and by Stecker.

Another dated June 9, 1891, between the Pioneer and Arctic Iron Companies and Charles McGregor for three months, covering the N. W. ¼ of the N. —. ¼ of sec. 3, signed by the two iron companies, by myself as agent, and Charles McGregor.

Another dated June 13, 1891, by the two companies, to G. T. Lobb, covering the N. W. ¼ of the N. E. ¼ of sec. 3, all these descriptions contained in these several options, sections 1, 2, 3, 4, 5 and 6, are in town 47 north of range 26 west. This option is signed by the two companies and Lobb.

Another one, dated Nov. 10, 1890, between the Pioneer and Arctic Iron Companies, and M. E. David, for three months, covering the N. E. ¼ of the N. W. ¼ of sec. 3, signed by the two iron companies, by myself as agent, and by M. E. David.

Another one dated Aug. 3, 1891, by the iron companies and Joseph King, and Richard Bennallack, for three months, covering the N. W. ¼ of the S. E. ¼ of sec. 32. That is in 48–26, and signed by the option holders also.

Another one dated Nov. 19, 1889, given by the two iron companies to Joseph Richardson, and covering the S. E. ¼ of the N. E. ¼ of sec. 5, given for three months and signed by the two companies, by myself as agent, and Mr. Richardson. This option was extended five times.

Another one, dated April 18, 1891, given by the two iron
538 companies, to Joseph King, for three months, covering the N. W. ¼ of the S. E. ¼ of sec. 32, 48–26, signed by the two

iron companies, by myself and Joseph King. There are no extensions on that one.

Another one, dated May 10, 1892, given by the two iron companies to the Climax Exploring Company, for three months, covering the N. W. ¼ of the S. E ¼ of sec. 32, 48–26, signed by the two iron companies, by myself as agent, and the Climax Exploring Company by John Kane, president. Upon these there are extensions, signed by me, the last one extending the option to February 10, 1893.

Another one dated Nov. 7, 1891, between these companies and Richard Bennallack and William C. Chipman, for three months, covering the N. W. ¼ of the S. E. ¼ of sec. 82, 48–26, signed by the iron companies, by myself as agent, and also by Bennallack and Chipman and the Climax Exploration Co. This option is extended to Feb'y 2, 1892.

Another one, dated June 1, 1892, between the same companies and John Brown and John Jones, for three months, covering the N. E. ¼ of the N. W. ¼ of sec. 4, signed by the two iron companies, and Brown and Jones. No extensions.

Another one, dated Oct. 22, 1891, by the Pioneer and Arctic Iron Companies, to George Gill for three months, covering the S. E. ¼ of the N. W. ¼ of sec. 32, 48–26, signed by the two companies and George Gill. There is an extension on the back signed by me, extending this option to October 22, 1892.

Another one, dated April 18, 1891, between the Pioneer and Arctic Iron Companies and Joseph King, for three months, covering the N. W. ¼ of the S. E. ¼ of sec. 32, 48–26, and signed by the two companies and King. There is one extension, extending the option to Oct. 19, 1891.

Another one dated Dec. 1, 1891, between the Pioneer and
539 Arctic Iron Companies and the East Buffalo Mining Co., a corporation organized under the laws of the State of Michigan, given for three months, covering the N. E. ¼ of the S. E. ¼ of sec. 5, signed by the two companies, and the East Buffalo Mining Co. by Edward Lobb, president. There is an extension on the back extending this option to June 1st, 1892. I don't think there was any lease taken out under that option. It was the next forty east, the East Buffalo, as Mr. Lobb called it, previously the Lackawanna.

Another one, dated March 3, 1891, between the Pioneer and Arctic Iron Companies and Wm. W. Walker, for three months, covering the S. W. ¼ of the N. E. ¼ of sec. 3, and signed by the Pioneer and Arctic Iron Companies and William Walker. No extensions.

Another one, dated the 8th day of Feb'y, 1891, given by the Pioneer and Arctic, to Anthony Broad for three months, covering the S. W. ¼ of the N. E. ¼ of sec. 5, signed by the iron companies and Anthony Broad. This option was extended by five different extensions, the last one extending its life to Feb'y 8, 1892.

Another one, dated Dec. 1, 1891, given by the Pioneer and Arctic to the Hawkeye Mining Company, a corporation organized under the laws of the State of Michigan, for three months, covering the

N. E. ¼ of the N. E. ¼ of sec. 5, signed by the two companies and the Hawkeye Mining Co. An extension on the back of this option by my signature extends the life of this option to May 1, 1892.

Another one, dated January 31, 1891, given by the Pioneer and Arctic Iron Companies to the U. S. Grant Iron Company, a corporation organized and existing under the laws of the State of Michigan, for three months, covering the N. W. ¼ of the N. E. ¼ of sec. 5, signed by the Pioneer and Arctic Iron Companies, and by the U. S. Grant Iron Co. by William Anderson, president. An extension on the back of this option extends it for three months from and after January 30, 1892.

540

Another one, dated May 2, 1890, given by the Pioneer and Arctic Iron Companies, to John W. Shad, for three months, covering the N. E. ¼ of the S. E. ¼ of sec. 32, 48–26, signed, Pioneer and Arctic Iron Companies, by myself as agent, and John W. Shad.

Another one, dated Oct. 23, 1889, by the Pioneer and Arctic Iron Companies, to Charles McGregor, for three months, covering the S. W. ¼ of the N. E. ¼ of sec. 4, signed by the Pioneer and Arctic Iron Companies, and Charles McGregor.

Another one, dated Dec. 28, 1889, given to the Pioneer and Arctic Iron Companies and George J. Northup and Ernest Rankin, for three months, covering the S. W. ¼ of the N. W. ¼ of sec. 6. This option is signed by the Pioneer and Arctic Companies, and Geo. J. Northup and Ernest Rankin.

The letter inside of this option, dated March 20, 1890, addressed to J. L. McClear, agent, Negaunee, Mich., signed by Mr. Northup and Mr. Rankin, is in the usual form of an application made to me for these options. They requested an option on such a description of land.

Mr. HAYDEN: I offer this in evidence as a sample.

Mr. ELDREDGE: We object to the letter as incompetent, irrelevant and immaterial.

COURT: It seems to me that the testimony that they made application is just as good as that paper.

Mr. HAYDEN: I think that is quite right.

Another one dated April 1, 1890, by the Pioneer and Arctic Iron Companies to M. A. Gibbs, of Negaunee, Mich., for three months covering the W. ½ of the E. ½ of the S. W. ¼ of sec. 31, 48–26. It is signed by the Pioneer and Arctic Iron Companies and M. A. Gibbs. That M. A. Gibbs was the one who was formerly a bookkeeper in the offices of the Pioneer Iron Co. and the Iron Cliffs Co.

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Another option, dated Feb'y 17, 1890, given by the Pioneer Iron Co. and Arctic Iron Co. to S. S. Rice for three months, covering the N. E. ¼ of the S. W. ¼ of sec. 32, 48–26, signed by the two companies and S. S. Rice.

Another one, dated Nov. 10, 1890, given by the Pioneer and Arctic Iron Companies to F. O. Clark, the attorney, of Marquette, Mich.

This is for three months, covering the N. W. ¼ of the N. W. ¼ of sec. 3, and signed by the two companies and F. O. Clark.

Another one dated May 28, 1890, given by the Arctic and Pioneer Iron Companies to Robert Finley, covering the N. E. ¼ of the N. W. ¼ of sec. 3, given for three months and signed by the two iron companies and Robert Finley. No extensions.

Another one dated Dec. 2, 1889, given by the Pioneer Iron Co. and Arctic Iron Company to Charles Sundberg and Peter L. Ramquist, covering the S. E. ¼ of the S. E. ¼ of sec. 5, for three months, signed by the two iron companies and Sundberg and Ramquist.

Here is another, dated Oct., 1889, given by the Pioneer Iron Company and the Arctic Iron Company to Alfred Kidder, a resident of Marquette, formerly the agent of the Champion Iron Company, and still agent of the Lake Angeline Iron Co. It does not seem to be signed by him; probably there is another there. I guess he never executed it.

Another one, dated May 26, 1891, given by the Pioneer and Arctic Iron Companies to Prosper Roberts, covering the S. E. ¼ and the N. W. ¼——

COURT: You have referred to one to Prosper Roberts. Did he have more than one?

A. No, I don't think he ever had more than one.

542 Another one, dated May 1, 1890, given by the Pioneer and Arctic Iron Companies to Samuel Redfern, covering the N. W. ¼ of N. W. ¼ of sec. 3, signed by the Pioneer and Arctic Iron Companies and Samuel Redfern.

Another one dated January 8, 1890, between the Pioneer and Arctic Iron Companies and James Gorman, covering the S. E. ¼ of the N. W. ¼ of sec. 32, signed by the Pioneer and Arctic Iron Companies and James Gorman. No extensions.

Here is one to Shad—one he had and surrendered it.

Another one, dated May 1, 1890, between the Pioneer and Arctic Iron Companies to Louis Sporley, covering the N. W. ¼ of the N. W. ¼ of sec. 32, for three months, signed by the Pioneer and Arctic Companies and by Mr. Sporley.

Another one, dated May 1, 1890, the same companies to Thomas M. Wells, signed by both companies and Thomas M. Wells.

Another one, given May 1, 1890, by the Pioneer and Arctic Iron Companies to Edward Blake, covering the N. E. ¼ of the N. E. ¼ of sec. 4, and signed by the companies by J. L. McClear and by Blake.

Another one, dated Jan'y 8, 1890, by the Pioneer and Arctic Iron Companies and Thomas Chellew for three months, covering the S. W. ¼ of the N. E. ¼ of sec. 32, signed by the two iron companies and by Thomas Chellew.

Another one, dated Jan'y 24, 1890, between these two iron companies and A. P. Dodge, for three months, covering the N. W. ¼ of the S. E. ¼ of sec. 32, signed by the Pioneer and Arctic and by Mr. Dodge.

Another one, dated Oct. 26, 1886, given by the Pioneer and Arctic

Iron Companies to A. B. Eldredge of Ishpeming, Mich., covering the N. W. ¼ of the N. W. ¼ and a portion of the N. E. ¼ of the N. W. ¼, belonging to said companies, in sec. 6, 47–26. That is on a
543 different form, and it is something I have nothing to do with. That was previous to my agency. I know Mr. Maitland's signature. I should say that was his signature, this one down here, there at the bottom. There is no question about that in my mind. He does not generally write it out Alexander Maitland. He began writing it Alex. Maitland, and finally abbreviated it to A. Maitland.

Q. This is signed by the Pioneer and Arctic Iron Companies, by Alexander Maitland, agent, and by A. B. Eldredge.

Mr. ELDREDGE: That is objected to as irrelevant and immaterial.

Mr. HAYDEN:

Q. Below is an extension reading as follows: "This option is hereby extended until the 26th day of April, 1887, A. Maitland, agent." That is his signature also?

A. Yes, sir.

On the back of this option are three extensions: "This option is extender until October 26, 1887. A. Maitland, agent." That is his signature also?

"This option is extended until January 26, 1888. A. Maitland, agent." That is his signature.

"This option is extended until April 20, 1888. A. Maitland, agent." That is his signature.

The other I gave was following that, the next year. This duplicate option I produced was among my files as agent. It came into my possession in some way; I don't know how. This is on a different form. I am not named as agent. This was given before I had anything to do with it. I gave an option before I became agent, and this is the same land.

Mr. HAYDEN: I wish to introduce this paper in evidence and have it marked.

Mr. ELDREDGE: I object to it as irrelevant, immaterial and incompetent.

544 Paper marked Exhibit 23.

Exhibit 23 is in the same form as Exhibit 22 hereto attached.

Another option, dated Oct. 31, 1889, given by the Pioneer and Arctic Iron Companies to James H. Rough, for three months, covering the N. E. ¼ of the N. E. ¼ of sec. 5. This is on the blank form which I used, signed by the Pioneer and the Arctic Iron Companies and James H. Rough.

Another one, dated September 1, 1890, given by the Pioneer and Arctic Companies to the Elba Iron Mining Company, a corporation organized and existing under the laws of the State of Michigan,

given for three months, covering the S. E. ¼ of the N. W. ¼ of sec. 6, and all that portion of the N. E. ¼ of the S. W. ¼ of sec. 6, lying north of the county road, signed by the two iron companies, and by the Elba Iron Company by A. Maitland, president. On the back of this is one extension signed by me as agent, extending it to June 30, 1890.

Another one, dated November 9, 1889, given by the Pioneer and Arctic Iron Companies to Louis Corbett, for three months, covering the S. E. ¼ of the N. W. ¼ of sec. 4, signed by both companies and Louis Corbett. On the back are three extensions signed by myself as agent. The last one extending it to November 9, 1890.

Another one, dated July 22, 1890, given by the Pioneer and Arctic Iron Companies, to John Q. Adams of Negaunee, Mich., for three months, covering the S. E. ¼ of the N. E. ¼ of sec. 4, signed by the iron companies and John Q. Adams.

Another option, dated July 22, given by the Pioneer Iron Company and Arctic Iron Company to Edward C. Anthony, covering the N. E. ¼ of the N. E. ¼ of sec. 4. This is signed by the two iron companies and Edward C. Anthony.

545 Another one, dated July 21, 1890, given by the Pioneer and Arctic Iron Companies to Charles Johnson, covering the S. W. ¼ of the N. E. ¼ of sec. 4, signed by the Pioneer and Arctic Iron Companies, and by Johnson.

Another one, dated May 1, 1890, given by the Pioneer and Arctic Iron Companies, to August P. Johnson, and E. C. Haggerson, for three months, covering the S. W. ¼ of the N. W. ¼ of sec. 4, signed by the Pioneer and Arctic Iron Companies, and by Johnson and C. E. Haggerson, and on the back appear four extensions, extending the life of the option to three months from and after May 1, 1891.

Most of these people to whom these options were given, live around this county. I think the man Roberts lived in the copper country, and I think Mr. Croze is from the copper country, and one of the men was from Ashland or Duluth. Most of them were in this county. Loranger, I think, was from the copper country.

The reason why, after 1891 or 1892, no more options were given, was the hard times.

There was another reason also: I think it was when Mr. Mather came in, there was an arrangement made whereby a man applying for an option would have to deposit, I think, it was $50 as an evidence of good faith, and that shut off some of them.

Mr. Bell suggested me as agent.

Mr. HAYDEN: I offer in evidence all these options which I have read, by referring to their dates, and the parties to whom given, and the descriptions, signatures, extensions, etc., all being in form exactly duplicates of the option put in evidence and marked Exhibit 22.

Mr. ELDREDGE: They are objected to as irrelevant and immaterial.

546 As I remember, those options were always issued on applications made to me. There was an understanding in the county among people who were disposed to explore at all that I represented the Iron Cliffs Company and the Arctic Iron Company and Pioneer Iron Company.

Cross-examination by Mr. ELDREDGE:

My agency was not limited entirely to the signing of these options on behalf of these two companies; there was signing them, and extending them, and seeing that they lived up to the terms of the options. The only power I had was to sign these options for the two companies when applied for, and to renew them, provided that upon investigation I found the parties had worked faithfully according to the terms of the option. That was the extent of my power, as far as I understood it. I had nothing to do with the form or the terms of the option; when a lease — to be granted it was provided on a printed form furnished by the company.

I don't think I was paid by checks of the Iron Cliffs Company. As I recollect it my checks were all from the Pioneer Iron Company. From the time this arrangement was made in 1889, until after Mr. Mather took control, I was not paid by checks of the Iron Cliffs Company.

Mr. HOYT: I object to that as already answered.

I made out the bills, and sent them to Cleveland, and after that, after Mr. Mather came in, I sent them to Mr. Mills and he forwarded them to Mr. Mather.

Q. Are you not mistaken? At the time you were appointed agent I was the attorney of the Iron Cliffs Company, was I not?

A. Yes, I think you were.

Q. And it was a considerable time after that before the Cleveland Cliffs Company was changed to the Cleveland, was it not?

Mr. HOYT: I object to that. Counsel has no right to testify.

547 A. Now, I wouldn't say for certain as to the first I got; but I am very confident of the rest of them, that they were made out in that way. For that is the reason I made out my bill and sent it to Mr. Mather, or sent it to Cleveland. And I think I got the heading on the blanks from the Cleveland Company and they sent it back and asked me to make it out to the Pioneer Iron Company and to make it in duplicate.

Q. Then you sent it back to Cleveland?

A. I sent that one back to Cleveland, yes. But I say after Mr. Mather came in most of my work was done with the Pioneer Iron Company with Mr. Mills, at Ishpeming.

Q. Have you a positive recollection of receiving Pioneer Iron Company checks?

A. To the best of my recollection I did. I would not say so as to

the first one; that was a little after I was appointed, before I got anything. The Pioneer Iron Company paid only once a year.

FRANK A. BELL, sworn on the part of the defendants, testified as follows:

Direct examination by Mr. HAYDEN:

I have acted as joint agent of the Pioneer Iron Company and the Arctic Iron Company in the giving of options and leases, commencing with the first of January, 1897, and continuing up to the present time. I had charge of the books and options at the time. Mr. McClear ceased to be the agent, because the matter was in abeyance as to who should be Mr. McClear's successor. There was about a month, during the month of December, that I was not the agent, after Mr. McClear left. Then I became the agent. I received my appointment from both companies. I was appointed by letter
548 from both companies. I was paid by the companies by check by the Arctic Iron Company for its share and by the Pioneer Iron Company for its share. The method was this: At the end of the year—they paid me annually—I sent a statement to each one of the companies for their half of my salary, and then I received a check back from each company for their proportion. The Pioneer Iron Company sent me a check for its share, and Mr. Healy paid me for the Arctic Iron Company. I am still the agent of the two companies.

In my office I have these options which were shown by Mr. McClear yesterday. They have been in my possession since Mr. McClear left. They were in my possession as the successor of Mr. McClear as agent. I have the records which Mr. McClear kept relative to these options, and the blank reports which were turned over to me by Mr. McClear for making reports of options in force, and the map of the lands which I was to issue options on, and I also have some applications for options which were given to me from time to time by people who wanted to take options; and I also have the letters from both companies appointing me their agent, and some correspondence with them relative to options and applications for options. All these forms of leases which you show me in their original form before any writing was put on them were turned over to me by Mr. McClear. The one headed at the top, "Instructions for Mr. Mack's option," was prepared by Mr. Healy, and sent to me with one special clause which Mr. Healy wanted inserted in the option to Mr. Mack, and also a change in the royalty which he was to pay, and he sent me their blanks, which I sent to him, and he returned them to me with the writing on, as it appears here now, and I was instructed by him by letter to issue an option in this form, or similar form, which I did. I think I have Mr. Healy's
549 letter enclosing it to me. I can tell about the date, anyway, because it was about the date of the Mack option, which was afterwards issued. The option to Mr. Mack was April 20, 1898.

Here is the first letter which I received from Mr. Healy, dated January 25, 1898, in regard to the Mack option. The first letter I received from Mr. Healy regarding this business in any way of the joint options, I received on November 13, 1896; that is Mr. Healy's handwriting.

Mr. HAYDEN: I wish to offer this letter in evidence.
Letter marked Exhibit 26, and is as follows:

CHICAGO, *Nov.* 13, 1896.

Frank A. Bell, Esq., Negaunee.

DEAR SIR: Yours of yesterday is at hand. Mr. McClear wrote me about appointing you as agent of the Pioneer and Arctic Iron Companies at Negaunee, but there is absolutely nothing to do and there has been nothing for over three years last past, and I do not expect that there will be anything in the immediate future.

Yours truly,

W. P. HEALY.

The next letter I received was a letter dated December 14, 1896, and signed by W. P. Healy, manager of the Arctic Iron Company.

Mr. HAYDEN: I offer this letter in evidence.
Mr. ELDREDGE: That is objected to as irrelevant and immaterial.
Letter marked Exhibit 27, and is as follows:

CHICAGO, *Dec.* 14, 1896.

Frank A. Bell, Esq., Negaunee.

DEAR SIR: W. G. Mather of the Pioneer Iron Company, and N. M. Kaufman of the Arctic, think that you ought to be appointed joint agent of both companies in place of J. L. McClear, resigned. I therefore hereby consent on behalf of the Arctic Iron Company that you shall be and are hereby appointed such joint agent to take effect January 1st, 1897, at the same compensation paid to Mr. McClear—one hundred dollars per year—one-half to be paid by each company, and fifty dollars for each option which you may issue, to be paid by the applicant for the option, no charges to be made for renewing or extending options.

Yours truly,

W. P. HEALY,
Manager of the Arctic Iron Company.

This letter is in the handwriting of Mr. Healy himself.

The next letter I received from the Arctic Iron Company is dated January 8, 1897, written by Mr. Healy himself, and signed by him. That was in answer to a letter which I had written him relating to a claim which was made by a Negaunee resident for losing a cow in a pit on the Pioneer and Arctic land.

Mr. HAYDEN: I offer this letter in evidence.
Mr. ELDREDGE: That is objected to as incompetent, immaterial and irrelevant.
Letter marked Exhibit 28, and is as follows:

CHICAGO, *January* 8, 1897.

Frank A. Bell, Esq., Negaunee.

DEAR SIR: Mr. Mather informs me that a cow belonging to Christ. Hansen was killed in an open pit on the Pioneer Arctic lands last summer and that he will accept $30 in full payment of damages. I inclose you cheque of Arctic Iron Company for $15 which you can pay to Hansen and take his receipt for one-half damages and forward receipt to me.

In all future cases of any kind affecting the Pioneer Arctic lands I will be obliged to you if you will send a duplicate statement to me of whatever you send to Mr. Mather, as he does not represent the Arctic, no more than I represent the Pioneer.

Yours truly, W. P. HEALY.

The next letter I had referring to the business of the two companies is dated January 13, 1897. It is in Mr. Healy's handwriting. It related to the business, and is in answer to a letter which I wrote to Mr. Healy. The mine inspector, Mr. Rough, notified me that there was some open pits, and that I, as the representative of the Pioneer and Arctic Iron Companies, should have them either closed or fenced. I sent notice to both companies as soon as I received it, and that is in reply to that.

551

Mr. HAYDEN: I offer it in evidence.

Mr. ELDREDGE: It is objected to as irrelevant and immaterial.

Paper marked Exhibit 29, and is as follows:

CHICAGO, *January* 13, 1897.

F. A. Bell, Esq., Negaunee.

DEAR SIR: Yours of the 12th inst. has been received. In 1889 the Arctic Iron Company purchased an undivided half of a portion of the Pioneer lands in the city and township of Negaunee. The Pioneer owns other lands in the city and township in which the Arctic has no interest. Both companies also own the mineral right under the greater portion of the residence portion of the city. I have notified Mr. Mather that the Arctic will stand half the expense of closing up the open shafts referred to, if on the Pioneer Arctic lands.

Yours truly, W. P. HEALY.

The letter dated January 3d, 1898, relates to the joint business. It is in Mr. Healy's writing, and signed by Mr. Healy.

Mr. HAYDEN: I offer this letter in evidence.

Mr. ELDREDGE: It is objected to as irrelevant and immaterial.

Letter marked Exhibit 30, and is as follows:

CHICAGO, *Jan.* 3*d*, 1898.

F. A. Bell, Esq., Negaunee.

DEAR SIR: I inclose you cheque for $50.00, salary for year ending December ult., 1897, as agent of the Arctic Iron Com-
552 pany of Negaunee. I received your letter of December 11, last, but did not answer it, as I heard that you were away. The description S. W. ¼ of N. E. ¼ I think is the old "Elba." It takes in a part of the residence portion of the city, including the Breitung house. How much royalty do you think they will pay? Ask Mr. Mathews how much can he give. Also have you heard from Mr. Mather?

Yours truly,

W. P. HEALY.

Letter of January 25, 1898, is a letter from Mr. Healy pertaining to the business.

Mr. HAYDEN: I offer it in evidence.

Mr. ELDREDGE: It is objected to as incompetent, irrelevant and immaterial.

Letter marked Exhibit 31, and is as follows:

CHICAGO, *January* 25, 1898.

F. A. Bell, Esq., Negaunee.

DEAR SIR: In reference to Mr. Mack's application for an option on the N. W. ¼ of N. E. ¼ sec. 5–47–26, I am in favor of letting him have it on the terms which he offers. 20 cents for non-Bessemer and 30 cents for Bessemer. I agree also that the clause in the option requiring 3 men should be waived. We did not require it from the other explorers on that 40. I therefore authorize you on behalf of the Arctic Iron Company to issue to John F. Mack of Marquette the usual option with the above modifications, provided Mr. Mather agrees to the same. I suppose it will be necessary for you to write Mr. Mather and ask his consent on behalf of the Pioneer Iron Company. I have offered Corrigan, McKinney & Co. a 20 cut rate on non-Bessemer, provided they ship 300,000 tons, and they certainly ought to pay more than on an abandoned exploration like the "Grant," where a person is liable to lose all that he invests in exploring.

Yours truly,

W. P. HEALY,
General Agent Arctic Iron Co.

553 The letter you show me, dated Chicago, April 22, 1898, is Mr. Healy's letter relating to the business.

Mr. HAYDEN: I offer it in evidence.

Mr. ELDREDGE: It is objected to as irrelevant and immaterial.

Letter marked Exhibit 32, and is as follows:

CHICAGO, *April* 22, 1898.

F. A. Bell, Esq., Negaunee.

DEAR SIR: *Mr. W. G. Mather and myself have agreed on a rate of fifteen cents for non-Bessemer and twenty-five cents for Bessemer for Ald. Mathew's proposed option. We give him a lower rate* than to Mr. Mack, because it will be more expensive mining under buildings, etc. Mr. Redfern will hand you the amendments agreed on so that a new license can be printed. I do not approve of the clause *in Mr. Mack's license making it subject to surface rights of third parties, if any.* There are none and hence we are only casting suspicion on our own title, if the question is ever raised. There was a man a few years ago who falsely claimed some interest there for agricultural purposes and a clause of that kind may hurt us hereafter. Where a person absolutely owns a piece of land no suspicion on his title should be cast by himself. Please get that clause stricken out of Mr. Mack's option on the ground of mistake.

Yours truly, W. P. HEALY.

That is all the correspondence with Mr. Healy, or the Arctic people I have now. I had some letters from Mr. Healy, two or three different years, regarding the Arctic Iron Company's proportion of the taxes on the Pioneer and Arctic Iron Company's lands, and he wrote me for a statement of the taxes which I sent him, and he afterwards returned me the statement with a check for the amount of the taxes, and asked me to pay them, which I did. I have had no correspondence with anybody else connected with the Arctic
554 Iron Company, Mr. Kaufman or Mrs. Kaufman. I understood Mr. Healy represented all the owners of the Arctic Iron Company.

While I was agent, I issued an option to Mr. Mack on what was known as the U. S. Grant property. The option was issued April 20, 1898, and on July 20, 1898, it was extended by me for three months. It is signed by the Pioneer Iron Company and Arctic Iron Company, by Frank A. Bell, agent, and John F. Mack, Sr. This option is in the general form of those given by Mr. McClear, except the special changes which were made by Mr. Healy to apply to Mr. Mack's opinion referred to in Mr. Healy's letter. That is the only option I ever issued. I had an option to issue to Capt. Matthews, but he decided afterwards he would not take it.

L. D. HARVEY, sworn on the part of the defendants, testified as follows:

Direct examination by Mr. HAYDEN:

I was employed by the Pioneer Iron Company at the time it started its furnace in Negaunee in 1857. I quit their employ in the spring of 1859. During the time I was there the Pioneer people did some work in an attempt to discover ore on lands south of the

furnace. That was during the winter of 1858. We were burning coal there, and covering the pits with earth, and we showed up a little ore. This ore was very lean ore.

I came to Negaunee later after I quit their employ, sometime in the sixties. Mr. Case was manager in 1862, or 1863. Mr. Case was running it at that time. He was running the furnace, superintending it, and he sunk a pit somewhere in there, and we went out there to see the ore. He asked my opinion on it. I told him I didn't think it was worth mining as long as we could get into the Jackson mine. It wasn't worth mining because the Pioneer
555 Iron Company had a twenty-five year lease of the Jackson Iron Company to furnish their ore. That was a dollar a ton for the ore out of the furnace; it figured about 50 cents royalty. The ore at that time—they didn't use anything but shovels at all. They only handled by hand what they could pick over. It was cheapest from the mine. This ore out south of the furnace in the south half of section 6, and over among the hills, appeared to be soft ore, as far as I knew. We never used soft ore in the furnaces at that time. We used to call that rotten stuff here. We didn't use the ore. We were in the Jackson mine, and we could get better ore, and we had the lease.

As to how much explorations were conducted out there in the sixties, in 1858 C. T. Harvey explored down probably four or five feet, and I. B. B. Case, I think, he went down seven or eight feet. That was the time he wanted me to look at it. I never went up there but once after I left there in 1859.

Cross-examination by Judge BROWN:

I wouldn't say that it was in 1861 that I went out there when Mr. Case was there, but somewhere near there, 1861 or 1862. I didn't know that hematite could be used in a furnace, for I never saw any of it until I came here.

As to my experience in running a furnace at that time, I came out from the Berkshire iron works to build that furnace. They built that furnace in 1857 and spring of 1858. We started in the spring.

Mr. HAYDEN: I wish to introduce in connection with the testimony of Mr. Bell and Mr. McClear, a contract dated September 14, 1889, made between the Pioneer Iron Company and the Arctic Iron Company, among the clauses of which there is a clause pro-
556 viding for the agency, for the purpose of giving options and mining leases—a joint agency—the same joint agency testified to by Mr. Bell and Mr. McClear. This instrument is executed under seal, the seals of both the Pioneer Iron Company and of the Arctic Iron Company and signed by the Pioneer Iron Company, by C. J. Canda, president, and H. Cronmeyer, secretary, and signed by the Arctic Iron Company by Mary Breitung, president, and W. P. Healy, secretary.

I suppose it will be admitted that this is Mr. Healy's signature?

Mr. PENNINGTON: It looks like it to me.

Mr. HAYDEN: It is Mr. Healy's signature. I say that as a witness. It is witnessed by John Rankin and D. Hudson on behalf of Mr. Canda, and the signatures of Mary Breitung and W. P. Healy witnessed by Frank B. Pearce and N. M. Kaufman. None of these witnesses are in the country since Mr. Kaufman has gone.

Mr. HOYT: Do you know the other signatures?

Mr. HAYDEN: I know the signatures of Mary Breitung and C. J. Canda, but Cronmeyer as secretary I do not know his signature.

Mr. ELDREDGE: It is objected to as irrelevant and immaterial.

Paper received in evidence and marked Defendants' Exhibit 04, and is as follows:

Whereas, the Pioneer Iron Company and the Arctic Iron Company, two corporations organized under the laws of Michigan, are owners of the ores and minerals in the lands hereinafter described, and differences have heretofore existed between both companies as to developing the mineral resources of such lands;

And whereas, both parties are desirous that said differences shall be amicably arranged, without legal proceedings; therefore,

557 This agreement, made this fourteenth day of September, A. D. eighteen hundred and eighty-nine, between the Pioneer Iron Company, a corporation organized under the laws of Michigan, party of the first part, and the Arctic Iron Company, a corporation organized under the laws of Michigan, party of the second part, witnesseth:

1. Said party of the first part hereby agrees to sell and convey by warranty deed, in fee simple, free and clear of incumbrances, to said party of the second part, an undivided one-half of the following described lands, at the rate of three dollars per acre, reserving to itself the mineral interest now owned by it in said lands, to-wit: West half of northwest quarter of section six in township forty-seven north, of range twenty-five west; east half; north half of northwest quarter, and southwest quarter of northwest quarter of section one; south half of northeast quarter, northwest quarter of northeast quarter, north half of northwest quarter and southeast quarter of northwest quarter of section two; north half of northeast quarter, southwest quarter of northeast quarter and northwest quarter of section three; north half of section four; northeast quarter and southeast quarter of southeast quarter of section five; all in township forty-seven north, of range twenty-six west; northwest quarter, southwest quarter of northeast quarter, northwest quarter of southeast quarter, northeast quarter of southwest quarter (except that part lying south and east of Marquette, Houghton & Ontonagon Railroad right of way); east half of northwest quarter of southwest quarter, and that portion of the east half of southwest quarter of the southwest quarter, and that portion of the southeast quarter of southwest quarter lying north of said railroad right of way, all in

section thirty-two in township forty-eight north of range twenty-six west, in the county of Marquette and State of Michigan.

558 Said deed shall be executed and ready for delivery to said Arctic Iron Company at the office of the Iron Cliffs Company in the city of Negaunee, Michigan, within thirty days from the date hereof, and thereupon said Arctic Iron Company shall pay to said Pioneer Iron Company twenty-seven hundred and eighty-four dollars in full for said land so conveyed. Said Pioneer Iron Company reserves and excepts all timber now on said lands, with the right to cut and remove the same for its own use at any time within five years from the date hereof, but not afterwards. Any timber on said land, at the expiration of said five years, shall jointly belong to both parties hereto.

2. Said Pioneer Iron Company shall also convey to said Arctic Iron Company, within thirty days from the date hereof, all its right, title and interest in and to all ores and minerals now existing or that may be hereafter discovered on or in the following described tract of land, free of incumbrances, by warranty deed, to-wit:

Commencing at a point on the south side of the county road from Negaunee to Marquette, said point being 251 feet south of the centre of section 6, township 47 north range 26 west measured along the north and south quarter section line of said section 6. Thence south along aforesaid north and south quarter section line of section 6 402 feet to an iron post. Thence south 32 degrees, 45 minutes, 592 feet to an iron post in the center of Partridge creek. Thence easterly along the center of Partridge creek to a point south of a point 695 feet east of the centre of said section 6. Thence north 1,545 feet to the south side of aforesaid county road. Thence south 80 degrees west 700 feet along the south side of aforesaid county road to the place of beginning. Containing 24 25-100 acres more or less.

559 Said Arctic Iron Company and its assigns or lessees shall have the right at any time to enter and explore for ores and minerals on said tract of land, east of the wire fence running north and south on said last mentioned tract, except in the iron yard of the Pioneer furnace west of the trestle of the Marquette & Western Railroad Company, without cost or compensation to said Pioneer Iron Company; but all holes and test pits so made in exploring shall be filled up by said Arctic Iron Company when such exploring is completed. The Arctic Iron Company shall be solely liable for any damage to third parties that may be caused by such explorations and shall save the said Pioneer Iron Company harmless from all damages, costs and expense caused thereby. In case said Arctic Iron Company, its assigns or lessees discover a mine or mines of ore or mineral in said tract, the said Arctic Iron Company or its successors or assigns shall have the right to purchase in fee simple, by warranty deed, free and clear of all incumbrances so much of said last mentioned tract as may be required for mining purposes, at one hundred dollars per acre, at any time within five

years from the date hereof, or at any time within five years from September fourteenth, eighteen hundred and ninety-four, at one hundred and fifty dollars per acre, and the value of any actual improvements made on said last mentioned tract after September fourteenth, eighteen hundred and ninety-four; but no part of said tract shall be so acquired for dumping rock or debris north of the south line of the right of way for the main track of the Chicago & Northwestern railway.

3. Said Arctic Iron Company shall convey to said Pioneer Iron Company all its right, title and interest in and to all ores and minerals now existing or that may be hereafter discovered on or in the following described tract of land, by warranty deed, free and clear of all incumbrances, to wit:

560 Commencing at a point on the south side of the county road from Negaunee to Marquette, said point being 251 feet south of the centre of section 6, township 47 north range 26 west measured along the north and south quarter section line of said section 6. Thence south along aforesaid north and south quarter section line of section 6 402 feet to an iron post. Thence south 32 degrees, 45 minutes west 592 feet to an iron post in the centre of Partridge creek. Thence westerly along the centre of Partridge creek to the west boundary line of the N. E. ¼ of the S. W. ¼ of aforesaid section 6. Thence north along the aforesaid west boundary line of the N. E. ¼ of the S. W. ¼ of section 6 283 feet. Thence N. 80 degress E. 122 feet; thence N. 80 degree- E. along the south side of the aforesaid county road 1,200 feet to the place of beginning. Containing 19 48-100 acres more or less.

4. Both parties to this contract agree to unite and do unite in giving mining options for mining licenses to third parties, or to any officer, agent or employé of either party hereto, for the purpose of exploring for iron ore on any portion of the lands described in subdivision one of this agreement, and also on the following described lands, where the ores and minerals existing therein are owned by both parties hereto, to-wit: That part of the south half of the southwest quarter of section five, south of the county road, the surface of which is now owned by George B. Connell and A. C. MacKenzie. Northeast quarter of southeast quarter of said section five; northwest quarter of northwest quarter, south half of northwest quarter, and the several portions of the southwest quarter of northeast quarter, and the northeast quarter of northwest quarter, northwest quarter of northeast quarter, southeast quarter of northeast quarter, where the ore and mineral is owned by both parties hereto, in said

561 section six. Also those portions of the northeast quarter of southwest quarter and nort'-west quarter of southeast quarter north of the south line of the county road.

5. Said agreement to unite in giving mining options and mining licenses to mine iron ore on said lands shall continue in force and be binding on the parties hereto, without power of revocation, for five years from the date hereof, and shall continue thereafter indefi-

nitely; but either party shall have the power to discontinue the issuing of such options or licenses at any time after the expiration of said five years, by giving six months' notice in writing to the other party hereto.

6. For the purpose of issuing such options, a joint agent shall be appointed by both parties thereto, who shall have the sole right to issue such options in the names of the parties hereto, their successors and assigns. No option shall issue for more than one forty-acre tract, except where fractional portions of a forty adjoin such forty-acre tract. The royalty shall be forty cents per gross ton for all kinds of iron ore removed under the authority of any license issued by both parties. Such license shall be for twenty years and the form of such options and licenses are hereto annexed, and marked Exhibits A and B, respectively. Such agents shall receive an annual salary of five hundred dollars, one-half to be paid by each party hereto. No option shall issue for a longer period than three months and such options shall be renewed from time to time, in the discretion of the joint agent. Such renewals shall not exceed nine months to any person where explorations are conducted without a drill, and one year where a drill is used. Such joint agent shall not be removed except by the joint consent of both parties hereto, provided that either party hereto may once in each year, but not oftener, remove and discharge such joint agent without giving any reason therefor.

562 7. J. L. McClear of Negaunee, Michigan, is hereby appointed as joint agent to issue such options. In case the joint agent resigns, dies, is removed or discharged by either party as aforesaid, or becomes incapacitated to act from any cause, the vacancy shall be filled by both parties hereto within thirty days thereafter. In case the parties hereto cannot agree in filling such vacancy within said thirty days, the person holding the office of circuit judge for the county of Marquette shall have power to appoint, by writing under his hand, a joint agent to fill such vacancy, on application in writing of either party hereto. The party making such application shall serve written notice on the other party hereto, when and where such application is to be made. Such notice may be served by mail, addressed to the Pioneer Iron Company, its successors or assigns, at Negaunee, Michigan, and to the Arctic Iron Company, its successors and assigns, at Marquette, Michigan.

8. The following persons shall be entitled to options according to the terms herein prescribed on the lands heretofore applied for by them, to-wit: F. E. Pearse, Anthony Broad, Edward Lobb, Samuel Redfern, Louis Corbett and James Rowe, in case they desire such options and present their applications to the joint agent within ten days after his appointment.

9. Any person or persons holding an option as aforesaid from said joint agent shall be entitled to a mining license from both parties hereto, who shall execute such license jointly and deliver the same

to the holder of the option within thirty days after application is made by the holder of such option.

10. The partition suit commenced by the said Arctic Iron Company against the said Pioneer Iron Company, now pending in the circuit court for the county of Marquette in chancery, shall be discontinued without costs to either party.

563 The conditions, covenants and agreements herein contained shall run with the land and be binding on the successors and assigns of the parties hereto.

In witness whereof, the parties hereto have caused this instrument to be executed, in duplicate, and their corporate seals to be hereto affixed, the day and year first above written.

PIONEER IRON COMPANY,
By C. J. CANDA, *President.*

Signed, sealed and delivered in presence of
JOHN RANKIN.
F. HUDSON.

[SEAL.]

Attested by:
H. GROENEMEYER, *Secretary.*
As to Mary Breitung, pres't.
And W. P. Healy, sec'y.

FRANK E. PEARSE.

[SEAL.]

N. M. KAUFMAN.

ARCTIC IRON COMPANY,
By MARY BREITUNG, *President.*
W. P. HEALY, *Secretary.*

WILLIAM A. ROSS, sworn on the part of the defendants, testified as follows:

Direct examination by Mr. HAYDEN:

Q. I will show you what purports to be amended articles of association of the Pioneer Iron Company. They are recorded November 10, 1890, at 8 o'clock a. m. in the office of the county clerk. I will ask you if that is a record of your office, and produced here by you to-day?

A. Yes, sir.

564 Mr. HAYDEN: I offer this in evidence.

Mr. ELDREDGE: It is objected to as irrelevant and immaterial.

Paper received in evidence and is an exact copy of the amended articles of association of the Pioneer Iron Company appearing in this record as Defendants' Exhibit 1 A.

I have the files of the Negaunee Iron Company. They are all the files in my office of the Negaunee Iron Company that I know anything of. I have not searched for other papers pertaining to the Negaunee Iron Company. The method of keeping papers in my office—there is a numerical index for all companies, and for those that have to file reports, there is a regular file case for them. That is the only file case of the Negaunee Iron Company. These are papers belonging to that file. The reports would be in that file; and where the articles of association have to be filed at the same time, I believe there is some provision whereby the articles of association are just recorded and not filed.

These are all the reports in my office pertaining to the Negaunee Iron Company. I think there are five or six. These are the articles of organization, and these five reports are the reports, so far as I know. They are indicated in that way by their filing, and belong in the files, I suppose they are. I can make as sure of this as I do of the papers generally in my office. I cannot make it any more sure by an examination. I am willing to say as clerk that these are the only papers pertaining to this company in my office.

Mr. ELDREDGE: All this is objected to as immaterial and irrelevant.

Mr. HAYDEN: I offer in evidence these articles of association of the Negaunee Iron Company, dated March 3, 1879, and signed
565 by Nicholas Lonstorf, John B. Maas and Margaret Lonstorf; acknowledged before Edward A. Maas, notary public.

Mr. ELDREDGE: It is objected to as immaterial and irrelevant.

The articles of association of the Negaunee Iron Company show it to be a corporation organized under the general mining laws of Michigan, the same as the Pioneer Iron Company.

Counsel for defendants then offered in evidence the five reports, as the only reports of the Negaunee Iron Company. The first is dated at Negaunee, Mich. They are sworn to on the 16th of August, 1875, in which it appears that J. B. Maas and Nicholas Lonstorf are the proprietors. There is no statement of any directors or stockholders and there is a statement that no business was done. There is a statement at the head of it, that it is made by the proprietors of the Negaunee Iron Company and the oath is signed "Maas & Lonstorf."

The next is dated August 7, 1875, and shows that no business was done. It is made by Maas & Lonstorf, who signed it as proprietors of the Negaunee Iron Company mine. In the place for stockholders is given Maas and Lonstorf, proprietors. No other stockholders.

The next is a paper dated August 7, 1875, also appearing to be filed as one of the five papers. It does not contain any names of stockholders, and appears to be a portion of the other paper just read. It is, however, filled out by J. B. Maas and Nicholas Lonstorf, who sign it as proprietors, and they sign the oath as Maas and

Lonstorf; and in the place where are blanks made for stating the business occurs the word "none."

The next paper is dated Negaunee, Mich., 1876, sworn to July 22, 1876. The statement shows no business done. It is filled out by Maas and Lonstorf, who sign their names as proprietors.

566 The next, the fifth and last, is dated Negaunee, Mich., July 8, 1876, headed "annual report," as being made by the owners of the Negaunee mine. The statement of the business is that there was none, made by J. B. Maas and Nicholas Lonstorf, who scratch out the words "majority of directors."

Mr. SHAULL: We object to the reports as irrelevant and immaterial.

Papers marked Exhibits 36 to 40 inclusive.

The witness continues:

These are the files of the Arctic Iron Co. There are no reports in this file at all. There are no reports in my office of that company.

Mr. HAYDEN: I wish to introduce the articles of incorporation of the Arctic Iron Company, for the purpose of showing who were the incorporators and owners of the stock.

Mr. ELDREDGE: I object to it as irrelevant and immaterial, and as not tending to show who were the owners of the stock except at the time of the organization.

The articles of incorporation of the Arctic Iron Co. were received in evidence, marked Exhibit 41, and show that the incorporators are Edward Breitung, Mary Breitung, William P. Healy and Ida F. Healy. They are recorded on the 10th of May, 1883, and executed on the 7th day of May, 1883, and organized under the general mining laws of the State of Michigan.

Cross-examination by Mr. SHAULL:

I have the articles of incorporation of the Pioneer Iron Company; the date of filing of the so-called articles of reorganization of the Pioneer Iron Co. is April 19, 1890. This is the one filed in my office.

Mr. SHAULL: I do not care to introduce the articles.

567 Mr. HOYT: You have done that already.

Mr. HAYDEN: I offer in evidence the following records in the office of the register of deeds. These are all conveyances by the Pioneer Iron Co. to the several persons whose names I will give, and recorded in the places I will give, and the dates of the instruments I will give:

Deed to	Liber.	Dated
Ernest Thela	V. 35.	August 15, 1873.
Alfred Cornell	V. 89.	Dec. 24, 1880.
Cornelius Gorman	V. 146.	Feb'y 7, 1881.
Ernest Haupt	V. 312.	Sept. 24, 1875.
Louis Jacobson	V. 459.	April 9, 1881.
Samuel Collins	V. 531.	May 14, 1881.
James Corrigan	V. 559.	June 4, 1881.
Andrew Buckley	V. 635.	June 4, 1881.
James F. Foley	W. 8.	June 10, 1881.
James F. Foley	W. 23.	June 17, 1881.
John Q. Adams	W. 54.	June 10, 1881.
Michael O'Leary	W. 101.	June 10, 1881.
Michael Sullivan	W. 152.	March 24, 1870.
Peter White	W. 410.	Aug. 6, 1881.
Edward Gaffney	X. 29.	Sept. 28, 1881.
Jas. McCullough	X. 319.	Sept. 25, 1880.
James McCullough	X. 321.	Aug. 26, 1879.
James Fitzgerald	X. 402.	Aug. 15, 1873.
Patrick Shea	X. 420.	Aug. 15, 1873.
John McKenna	X. 443.	Dec. 1, 1876.
John Sawbridge	X. 483.	April 12, 1882.
Henry Lee	X. 488.	April 13, 1882.
John Conway	X. 563.	May 16, 1882.
James Devine	Y. 32.	April 29, 1882.
James Sheehy	Y. 56.	May 22, 1882.
Mrs. Mary Egan	Y. 96.	Dec. 6, 1878.
W. R. Perry	Y. 155.	June 5, 1882.
A. Brand	Y. 157.	June 5, 1882.
Edward Gaffney	Y. 210.	July 12, 1882.
Edward Sweeney	Y. 223.	May 1, 1882.
Thomas Buckley	Y. 383.	May 20, 1882.
John Neddo	Y. 396.	Nov. 10, 1882.
Geo. Mall	Y. 401.	May 2, 1882.
Theophile Willett	X. 493.	May 3, 1882.
568 Nathan Coleman	Y. 495.	Oct. 13, 1882.
Louis Keopp	Y. 543.	Sept. 15, 1880.
Adam Zine	Y. 589.	April 14, 1882.
Charles E. Wright	Y. 48.	April 17, 1868.
Patrick Trenore	6, 6.	Dec. 28, 1882.
A. Maitland	6, 29.	Nov. 18, 1882.
Frank Fassbender	26, 173.	Nov. 9, 1882.
Zophia Schens	6, 256.	Jan'y 7, 1880.
Joseph Riggs	7, 14.	July 17, 1883.
Joseph ——,	7, 71.	Aug. 17, 1881.
Edwin Lamire	8, 83.	Sept. 18, 1883.
Elisha Carey	8, 132.	Oct. 13, 1883.
Patrick Sporley	7, 114.	May 12, 1882.
Louis Koepp	8, 163.	July 3, 1880.

Isaac Johnson	7, 133	July 12, 1883.
Nathanial Hibbard	7, 331	July 25, 1883.
Ernest Thela	7, 364	Aug. 9, 1882.
Henry Thela	7, 366	Aug. 9, 1882.
John Mulholland	7, 370	Dec. 28. 1883.
Afam J. Sterling	7, 402	May 2, 1883.
Charles Olson	7, 84	June 15, 1883.
Geo. B. Cornell	7, 204	Sept. 23, 1884.
Jacob Snyder	12, 285	Oct. 30, 1883.
John Shea	9, 280	Jan'y 20, 1868.
S. H. Webb	12, 329	April 22, 1885.
Albert Boyer	12, 338	April 12, 1883.
Samuel Redfern	12, 253	May 6, 1885.
John Harrington	11, 217	Dec. 5, 1871.
Adolph Wicklander	12, 362	Oct. 18, 1884.
Joseph Baraga	11, 560	Aug. 31, 1882.
Martin Hackenjos	12, 608	Jan'y 11, 1886.
Ernest Naput	14, 41	Sept. 30, 1884.
Thomas Dugan	15, 174	June 25, 1868.
M. & W. Ry. Co.	15, 212	Nov. 23, 1886.
Frank E. Pierce	14, 241	Dec. 23, 1886.
H. F. Maitland	14, 260	Dec. 29, 1886.
Mrs. Montgomery		
—— Carmichael	14, 276	Feb. 26, 1887.
Stephen Shea	16, 160	April 17, 1868.
Thos. McCaulay	14, 328	April 7, 1887.
John Redway	14, 349	April 27, 1887.
Alphonse Tawville	14, 351	Dec. 7, 1886.
Lewis Miller *et al*	14, 378	May 10, 1887.
569 —. Mueller	14, 380	May 11, 1887.
Anthony Broad	14, 382	May 17, 1887.
Alfred ——	14, 423	Mar. 11, 1887.
M. Miller	15, 422	Dec. 7, 1886.
Louis Vasheneau	15, 426	Jan'y 11, 1887.
Ferris Boden	15, 436	May 24, 1870.
Oliver Lequia	14, 438	Nov. 10, 1869.
Theodore Mesnard	15, 498	Aug. 24, 1887.
Cæsar Shelko	15, 496	Aug. 2, 1887.
Mailand A. Gibbs	14, 517	June 14, 1887.
Alfred La Croix	14, 542	May 16, 1887.
James Birch	15, 553	Aug. 16, 1887.
Oliver Lequia	14, 563	Nov. 3, 1887.
Augustus C. McKenzie	14, 571	Oct. 12. 1887.
Ernest Thela	19, 46	April 30, 1887.
—. Hall	19, 116	Dec. 7, 1886.
Lennis Corliet	18, 146	Oct. 12, 1886.
Chris Le Beau	18, 295	June 30, 1882.
Lennis Corliet	19, 375	Jan. 25, 1889.
Michael Gaffney	19, 339	Oct. 12, 1880.

Arctic Iron Co.	18, 418	Mar. 18, 1889.
Helen Tawville	18, 476	April 18, 1889.
David C. Lloyd	19, 483	May 18, 1889.
Alvis Salladin	18, 613	Sept. 12, 1889.
— ——	22, 41	Oct. 30, 1889.
Nicholas Laughlin	22, 39	May 27, 1889.
A. C. McKenzie	21, 65	Oct. 20, 1879.
Arctic Iron Co.	22, 47	Sept. 14, 1889.
Arctic Iron Co.	22, 120	Nov. 14, 1889.
Alex. Maitland	22, 160	Jan. 20, 1890.
Charles Bennett	22, 285	Feb. 23, 1882.
Michael Corliet	21, 356	July 29, 1889.
Frank Michael	22, 367	May 22, 1890.
A. C. McKenzie	21, 402	May 22, 1890.
Christine ——	24, 171	June 30, 1890.
Edward Lobb	24, 189	Sept. 28, 1891.
Mary C. Smith	24, 204	Sept. 28, 1891.
Abram Boulsom	24, 208	Sept. 28, 1891.
Henry Yanson	25, 269	Sept. 28, 1891.
Christian Hanson	24, 259	Sept. 28, 1891.
Jacob Heisel	24, 269	Sept. 28, 1891.
Thomas Crout	25, 278	Nov. 16, 1891.
Deed to estate of		
570 Levi ——	25, 370	Mar. 24, 1892.
B. ——	25, 389	Nov. 23, 1891.
John McGill	24, 394	Mar. 11, 1892.
Chris Hanson	24, 396	May 29, 1892.
—. Anderson	24, 398	May 9, 1892.
Frederick Engstrom	24, 426	Sept. 28, 1891.
Q. Deed to Len. Corliet	28, 538	July 19, 1892.
—— ——	25, 570	Oct. 14, 1892.
Solomon Moyle	24, 639	July 18, 1888.
Wm. Neely *et al*	28, 1	Dec. 29, 1892.
Wm. Neely *et al*	28, 3	May 9, 1892.
Wm. Neely *et al*	28, 5	Jan. 14, 1892.
John Rough	28, 82	Sept. 28, 1891.
J. S. Johnson	29, 125	Jan. 14, 1893.
Donald McDonald	29, 290	Mar. 2, 1894.
Wm. Neely *et al*	29, 276	April 12, 1893.
Eugene Either	28, 288	Mar. 12, 1894.
Esther Remillard	29, 461	April 10, 1895.
Hans B. Johnson	32, 269	Nov. 23, 1896.
Delos Lecunyer	31, 556	April 24, 1896.
Michael O'Leary, Jr.	34, 184	July 13, 1892.
Charles Martel	35, 237	June 17, 1881.

All the foregoing deeds were conveyances of lots platted by the Pioneer Iron Co. as an addition to the city of Negaunee, but none of them embraced lands involved in this suit or embraced in the so-

called ninety-nine year instrument, the sales being made in the course of business of selling such lots, and all the deeds contained reservations in the following terms: "Saving and reserving, however, unto the said party of the first part (the Pioneer Iron Company) and to its successors and assigns forever, all the ores and minerals, and all slates, sandstone, limestone, granite, marble and other stone or rock valuable for building or other purposes, on or beneath the surface of said land, or any part or portions thereof, together with the right to enter upon said lands and explore therefor, and to mine,
smelt and refine such ores and minerals, and to quarry and
571 dress such stone or rock, and to remove the same, and for
that purpose to erect or construct and maintain all of such buildings, machinery, roads, or railroads, sink such shafts, remove such soil, occupy so much of said land, and use and divert such streams or ponds of water thereon as may be necessary or convenient for the successful prosecution of such business."

FRED SMITH, sworn on the part of the defendants, testified as follows:

Direct examination by Mr. HAYDEN:

I am in charge of the Pioneer furnace in this city for the present. Mr. Gray is the manager, when he is at home. He is now absent. During his absence I am in charge. I have been employed at the furnace since July 10, 1899.

The Pioneer Iron Co. is operating the furnace now. The Pioneer Iron Co. has been operating the furnace since Dec. 1, 1899. It has been operating as the Pioneer Iron Co., paying all the men, etc. All the business generally is done by the Pioneer Iron Co. The furnace is still in blast and the business still being conducted.

Mr. ELDREDGE: That is objected to.

The business is still being conducted by the Pioneer Iron Co. This furnace has been making charcoal pig iron. It is located in the city of Marquette.

Cross-examination by Mr. SHAULL:

I have been at the furnace since July 10, 1899. Shaffer & Gray operated it before the present operators. I know nothing about the book-keeping. I have nothing to do with drawing the checks. I make the pay roll. I am what is known as a founder; you might say superintendent. I work in the office part of the time. Of course my business brings me into the office a good deal of the time.

572 Q. Do you know anything about who has the title to the property from your own knowledge?

Mr. HAYDEN: I have not proved title by him. I will show that afterwards. He don't know about the title.

It is not a fact that all I know about it is what I see from making up the pay roll. During Mr. Gray's absence I have occasion to write to the company for information and such like. All I know about it is that the Pioneer Iron Co. is operating it. From the letters I wrote and making the pay rolls is one way I judge it. I also judge it from the fact of their paying the bills and pay rolls, etc.

As to whether the furnace is actually owned by the Pioneer Iron Co., or whether it is being operated by them under an arrangement with Shaffer & Gray I never saw any deeds that were made to the Pioneer Iron Co. I don't think they are operating under an arrangement with Shaffer & Gray. I couldn't answer as to that. I know Mr. Gray is the manager and draws a salary. I don't think they have any arrangement with Shaffer & Gray, anything of that kind. I couldn't swear to anything of that kind. I have never heard of anything of that kind.

Re-direct examination by Mr. HAYDEN:

Mr. Gray is the manager of the Pioneer Iron Co. I know he is on the pay rolls and draws a salary.

Counsel for defendants then offered in evidence a deed from the Carp River Furnace Co. to the Pioneer Iron Co. dated Dec. 14, 1899, and recorded in Liber 34 of Deeds, pages 466, 467 and 468, in the office of the register of deeds for Marquette county. Deed shows a conveyance in due form of the property known as the Carp River furnace, now the Pioneer Iron Co.'s furnace, which the witness just testified about, in consideration of the sum of $20,000.

573 Mr. SHAULL: I object to the introduction of the deed as immaterial and irrelevant.

Mr. ELDREDGE: We object to it because the deed isn't properly proven.

Paper marked Defendants' Ex. 05 and is as follows:

Received for record January 3rd, A. D. 1900, at 9 o'clock a. m. A true copy.

JOSEPH H. PRIMEAU, *Register.*

Deed.

Carp River Furnace Co.
to
Pioneer Iron Co.

This indenture made this fourteenth day of December, in the year one thousand eight hundred and ninety-nine, between the Carp River Furnace Company (formerly the Detroit & Marquette Iron Company) a corporation under the laws of Michigan, party of the first part, and the Pioneer Iron Company, a corporation under the laws of Michigan, party of the second part.

Witnesseth, that the party of the first part, for and in consideration of the sum of twenty thousand dollars ($20,000) to it in hand — by the Pioneer Iron Company, receipt whereof is hereby confessed and acknowledged, does by these presents grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part, and to its successors and assigns forever, all those certain pieces or parcels of land situate and being in the city of Marquette, in the county of Marquette and State of Michigan, described as follows, to-wit: Commencing at the intersection of the easterly line of Lake street, so-called, in the city of Marquette, county of Marquette and State of Michigan, as now used, with the section line between sections 26 and 35, township 48 north, range twenty-five (25) west, running thence northwesterly along the easterly line of said Lake
574 street to its intersection with the westerly line of the right of way of the Duluth, South Shore & Atlantic Railway Company; thence southeasterly along the westerly line of said right of way to its intersection with the section line between said above named sections 26 and 35, thence west along section line to the point of beginning.

Also that portion of Government lot numbered one (1) of section 36, township 48 N. range 25 W. not sold to the State of Michigan for a portion of the State prison site including all platted lots in Burt and Ely's addition to the village, now city, of Marquette, comprised within the boundaries of said lot one (1) not sold to the State of Michigan.

A description of said lots by their block and lot number being contained in the schedule thereof attached hereto and marked "Exhibit A" and made a part hereof. Also lots eighty-four (84), eighty-five (85) and eighty-six (86), of Burt and Ely's addition to the village (now city) of Marquette; and that part of section 35, township 48 N. range 25 W. lying east of Lake street, as shown in the plat of Burt and Ely's addition to the village of Marquette as now used, and also that part of section 35, township 48 N. range 25 W. lying south and east of the following boundary line:

Beginning at the southeast corner of lot eighty-seven (87) of Burt and Ely's addition to the said city of Marquette, thence along the south line of said lot eighty-seven (87) to the southwest corner of said lot eighty-seven (87); thence south 2 degrees and 58 minutes east 100 feet, thence south 13 degrees and 58 minutes east 100 feet, thence south 26 degrees and 28 minutes east 100 feet, thence south 43 degrees and 58 minutes east 100 feet, thence south 49 degrees and 28 minutes east 100 feet, thence south 40 degrees and 59 minutes east 100 feet, thence south 11 degrees and 49 minutes east 100 feet, thence
575 south 5 degrees 11 minutes west 100 feet, thence south 13 degrees and 51 minutes west 425 feet, thence south 5 degrees and 9 minutes east 432 and five-tenths feet, thence south 13 degrees and 11 minutes west 1,100 feet, thence south 57 degrees and 31 minutes west 2,080 feet, to a point 358 feet east of the northwest corner and on the north line of the south half of the southeast quar-

ter of section 35, township 48 N. range 25 west. It being agreed between the said parties that lot eighty-seven (87) of Burt and Ely's addition to the village (now city) of Marquette is to be kept open as a highway for the common use of the grantor and grantee and their successors and assigns.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining; to have and to hold the said premises as described with the appurtenances unto the said party of the second part, and to its successors and assigns forever.

And the said Carp River Furnace Company for itself, its successors and assigns forever, does covenant, grant, bargain and agree to and with the said party of the second part, its successors and assigns, that at the time of the ensealing and delivery of these presents, it is well seized of the above granted premises in fee simple, that they are free from all encumbrances whatever.

In witness whereof the said party of the first part has hereunto set its corporate seal and caused these presents to be subscribed to by its president and secretary by due authority of corporation, the day and year first above written.

CARP RIVER FURNACE COMPANY,
By HIRAM A. BURT, *President*,
NOAH W. GRAY, *Secretary*.

Sealed and delivered in the presence of
GEO. I. COURTNEY.
GEO. H. RUSSELL.
[CARP RIVER FURNACE CO. SEAL.]

576 STATE OF MICHIGAN, } ss:
County of Wayne, }

On this fourteenth day of December, A. D. 1899, before me, a notary public in and for said county, personally appeared Hiram A. Burt, president, and Noah W. Gray, secretary of the Carp River Furnace Company, who made oath that he, the said Hiram A. Burt, as president, and he, the said Noah W. Gray, as secretary, that they executed the foregoing instruments as president and secretary, and affixed the corporate seal of said company thereto by due authority of the corporation and as its free act and deed.

[NOTARIAL SEAL.] GEORGE I. COURTNEY,
Notary Public, Wayne Co., Michigan.

"EXHIBIT A."

List of lots included in Government lot 1 of section 36, township 48, range 25 west, in Marquette county, in Burt and Ely's addition to the village, now city, of Marquette, and referred to and included in conveyance to which this list is annexed, viz.:

Lots 86, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103 and part of 104.

Lots 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217 and part of lot 218.

(Certificate of county clerk attached certifying that the above is a correct transcript from the records of his office.)

Counsel for defendants then offered in evidence in connection with the testimony of operations, of what is known as the Shad property, the record of a lease from John W. Shad and others to John Q. Adams and others, recorded in Liber 3 of Misc. Records of this county, pages 150 to 152 inclusive. The lease is dated December 7, 1879, and runs for a period of 12 years from and after
577 Oct. 1, 1879. It covers the S. E. ¼ of the N. W. ¼ of sec. 7, 47–26. Contained in this lease is the following clause:

"This lease is given and made subject to all the reservations contained and mentioned in a lease of said land from C. T. Harvey to Edward Breitung, dated Feb. 1, 1871, and executed and acknowledged Sept. 19, 1871, and in a lease of said land from C. T. Harvey to said Breitung dated Oct. 24, 1870, and in a lease of said land from James J. Reynolds to said Breitung, dated Feb. 1, 1871; and in a lease of said land from the Manganese Iron Co. to said first party dated June 21, A. D. 1878."

Mr. SHAULL: That is objected to as immaterial and irrelevant.

Counsel for defendants thereupon offered in the same connection a lease by the Manganese Iron Co. to Shad, referred to there, recorded in Liber 2, page 537. The date of this is June 21, 1878. It is given for a period of 13 years from and after the first day of October, 1878, and I call attention to the following reservation clause in this lease: "This lease is given and made subject to all the reservations contained and mentioned in a lease of said land from C. T. Harvey to Edward Breitung dated Feb. 1, 1871, and executed and acknowledged Sept. 19, 1871; and a lease of said lands from said Harvey to said Breitung, dated Oct. 12, 1870; and a lease of said land from James L. Reynolds to said Breitung dated Feb. 1, 1871. The said leases are recorded in the office of the register of deeds of said county of Marquette, and reference is here particularly made to said leases as to the reservations contained in the same."

The above lease covers the E. ½ of the N. W. ¼ and the N. ½ of the N. E. ¼ of sec. 7, T. 47 N. R. 26 W., Marquette county.

This lease was assigned to different parties—four different assignments.

578 The execution of the lease by the Manganese Iron Co. is by Edward Breitung, president, and John B. Maas, secretary, of the Manganese Iron Co.

The rights of the Manganese Iron Co. in the foregoing lease were acquired from Edward Breitung, by the assignment to it by said Breitung of the lease executed to Breitung by Charles T. Harvey and James L. Reynolds, recorded in Liber 2 of Miscellaneous Records, page 257.

Counsel for defendants thereupon offered the record of an assignment of leases given by Charles T. Harvey and James L. Reynolds, to Edward Breitung. It is an assignment to the Manganese Iron Co. recorded in Liber 2 of Misc. Records, page 257. The assignment is made expressly subject to the terms and conditions of said leases, and also subject to the terms and conditions of a certain sub-lease executed by Breitung to various parties.

The leases so assigned to the Manganese Iron Co. were the leases from Charles T. Harvey and James L. Reynolds to Edward Breitung, dated February 1, 1871, and appearing in the testimony of James F. Foley and are exhibits of defendants marked 02 and 03.

Mr. SHAULL: That is objected to as immaterial and irrelevant.

Counsel for defendants thereupon offered in evidence a lease from the Pioneer Iron Co. and the Arctic Iron Co. to Samuel Mitchell, recorded in Liber 4 of Miscellaneous Records, page 547. This lease is dated April 23, 1886, between the Pioneer Iron Co. and the Arctic Iron Co., two corporations organized under the laws of the State of Michigan, parties of the first part, and Samuel Mitchell of Negaunee, party of the second part. The lease is given for the period of 20 years from the date of the lease. It covers the N. E. ¼ of the S. E. ¼ of sec. 5, 47–26. It is signed by the Pioneer Iron Co., by C. J. Canda, president; attested by H. Cronmeyer, secretary, with the corporate

579 seal of the Pioneer Iron Co. affixed and duly witnessed. It is signed on the part of the Arctic Iron Co. by Edward Breitung, president; W. P. Healy, secretary, and duly witnessed. Also signed by Samuel Mitchell. This lease was assigned to one Payne; the record of the assignment being in Liber 5 of Miscellaneous Records, page 59; and by Payne it was assigned to the Lackawana Iron Co. That assignment is recorded in Liber 5 of Miscellaneous Records, page 88.

Mr. SHAULL: It is objected to as immaterial and irrelevant.

Counsel for defendants then offered in evidence the record of a lease from the Pioneer Iron Co. and the Arctic Iron Co. to the Buffalo Mining Co., recorded in Liber 4 of Miscellaneous Records, pages 489 to 495 inclusive. The lease is dated April 15, 1886, and runs for the period of 20 years from its date. It covers the N. W. ¼ of the N. E. ¼ of sec. 5, 47–26. It is executed by the Pioneer Iron Co. by C. J. Canda, president, and H. Cronmeyer, secretary; and by the Arctic Iron Co. by Edward Breitung, president, and W. P. Healy,

secretary, and is duly acknowledged. Said lease provides that the Pioneer Iron Company and the Arctic Iron Company, the lessors therein named, shall each receive one-half of the rents and royalties therein reserved.

Mr. SHAULL: All these are objected to as immaterial and irrelevant.

Defendants' counsel then offered in evidence the record of a 99 year lease, in Liber 1 of Miscellaneous Records, at page 64, on the 17th day of Sept., 1857, at 6 o'clock p. m.

The said lease is attached to the bill of complaint in this case, and admitted by the answer, but said record shows that the word "furnace" as contained in the copy of this lease attached to the bill should be "furnaces."

Defendants' counsel then offered in evidence the record
580 of a deed from the Pioneer Iron Co. to the Arctic Iron Co. recorded March 25, 1889, and dated March 16, 1889, recorded in Liber 18 of Deeds of this county, 418 and 419. This deed covers or describes the land conveyed as the N. ½ of the S. E. ¼ of sec. 5, 47–26, together with the right of mining or developing the minerals which may be discovered by said second party in and on the said land. "And the said parties of the second part to account to said party of the first part for one half of all such minerals, marble, etc., as may be mined. The party of the first part excepts and reserves to itself, its successors and assigns all its interest in the minerals, marble, etc., being an undivided one-half interest in and to the minerals which have been or may be discovered on said lands." It contains further this reservation: "Provided, and it is agreed, however, that the party of the first part, its successors and assigns, shall have the sole right, free of cost or compensation to the party of the second part, to mine for their own use or manufacturing purposes, within the limits of Marquette county, as said limits existed on the 26th day of February, 1857, any mineral, ores or marbles found on the said land; but shall have no right to sell to other parties for exportation without accounting to the party of the second part for its joint half interest therein."

Mr. SHAULL: That is objected to as immaterial and irrelevant.

JAMES S. HOYT, recalled on the part of the defendants, further testified as follows:

My recollection is that the Buffalo Mining Co. under its lease paid royalties to the Pioneer Iron Co. and continued its mining operations until about two years ago—paid one-half of the royalty to the Pioneer Iron Co. Whether during the last two years they
581 have done any mining or not, or whether they have paid one-half of the minimum royalty provided for in the lease, I am not sure about; although I think that lease is still in force. But I know that, as a director of the company, reports were made from time to time to the directors as to the amount of royalty, and it ran up into the thousands of dollars.

Mr. ELDREDGE: Are you testifying now?

A. Yes, sir. That is what I state, that I know as a matter of fact. The statements I have with me, which were made by the Buffalo Mining Co. to the Pioneer, running from——

Q. From the time we made the present lease in Cleveland?

A. It was about two years ago; that is my recollection.

Since that time it has not been working under the Buffalo lease at all. It has been working under the lease to the Regent, and they have paid royalty to the two companies. Up to two years ago I know as a matter of fact that we were receiving our share of the royalties from the Buffalo. When I say "we," I mean the Pioneer Iron Co., and those royalties were received and deposited in a bank account kept by the Pioneer Iron Co. and disbursed in the business of the Pioneer Iron Co. up to two years ago when the lease was made to the Regent Iron Co. and the Pioneer has been receiving—I will let that go, because I do not know definitely about that. Those royalties were received up to two years ago.

Mr. ELDREDGE: I move that the last statement, in regard to there being a deposit made of the money and a bank account kept for the Pioneer Iron Co., and disbursed for the business of the company, be stricken out.

The witness continues:

Here are the reports, running up as late as 1891. They begin in 1887, and run to April, 1891. And I can state as matter of
582 fact that since then the reports of the Buffalo Mining Co. have been sent to the Cleveland office of our company. These we found here in Negaunee. They have been sent to Cleveland since 1891 and royalties have been received from the Buffalo Mining Co. up, I think, to two years ago. That is my recollection.

Mr. ELDREDGE: We object to them as irrelevant and immaterial.

Papers marked Exhibits 42 to 68 inclusive.

These exhibits are a series of reports to the Pioneer Iron Company of operations conducted by the Buffalo Mining Company under the lease to that company by the Pioneer and Arctic Companies, elsewhere in evidence, extending from the beginning of the season of 1887 down to the month of December, 1899.

These are monthly reports headed as follows:

"Buffalo Mining Co. to Pioneer Iron Company, Negaunee, Michigan.

"Statement showing amount of iron ore shipped from the Buffalo mine, located on the following described land, to-wit, northwest quarter of the southeast quarter of section five, township forty-seven north, range twenty-six west, county of Marquette, State of Michigan, during the months of —— ——, 189–"

Following this heading is a statement of the shipments of iron ore, the amount of royalty thereon and then the distribution of the royalty under the following clause:

"Distribution: Pioneer Iron Company, Negaunee, Mich., one half, —— dollars. Arctic Iron Company, Marquette, Mich., one half, —— dollars."

The statements show various quantities of ore shipped, from 435 tons in September, 1887, to 8,817 tons in the month of November, 1890, and various quantities in other months and in other years.

Judge BROWN: I would like to interpose the objection
583 that they do not tend to show user of such a franchise as is granted them by the charter.

Counsel for defendant then offered in evidence an option for mining iron ore, dated Nov. 21, 1886, and given by the Arctic Iron Co. and Edward Breitung, covering the S. W. ¼ of the S. E. ¼ of sec. five, 47–26, in the county of Marquette, State of Michigan. This option is given to Andrew A. Anderson. The signatures of all the parties to this are admitted. This option comprises a form of lease attached to it, to be used under the terms of the option. The lease does not appear ever to have been issued. But the option provides for certain exploratory work and certain conditions under which this lease will be issued; and the form of the lease is the regular one for mining iron ore, and provides for a period of twenty years.

Paper marked Exhibit 69 and is as follows:

This agreement, made this 21st day of November, 1886, between the ARCTIC IRON COMPANY, a corporation organized under the laws of the State of Michigan, and EDWARD BREITUNG, of Negaunee, Michigan, parties of the first part, and ANDREW A. ANDERSON, of Marquette, Michigan, party of the second part,

Witnesseth: That the said party of the second part shall have and is hereby granted the option of taking a mining lease to mine iron ore on the lands described as follows, to-wit: The southwest quarter of the southeast quarter of section five in township forty-seven north, of range twenty-six west, in the county of Marquette and State of Michigan, until the first day of May, 1887, at twelve o'clock noon of that day, and no longer, on condition that said party of the second part shall commence explorations for iron ore on said lands within ten days from the date hereof, and shall keep not less

than three men engaged in making explorations during the
584 term of this option, unless prevented by the weather of by unforeseen accidents; or in lieu of such men said party of the second part shall keep a diamond drill at work making such explorations; *provided*, that if the surface of any of the land above described is owned by a third party or parties, no exploration shall be made on such land having a tendency to injure or destroy any improvements thereon until the right to carry on such explorations or mining is duly obtained. The cost of obtaining such right to be borne by the party of the second part.

Said party of the second part shall be entitled to a mining lease to mine iron ore on said land for the term of twenty years from the date hereof, at any time before the expiration of this option, by making application at the office of said Arctic Iron Company in the city of Marquette, Marquette county, Michigan, and at the same time paying in advance three months' rent on said lands. And thereupon the said parties of the first part shall, within thirty days thereafter, execute and deliver to said party of the second part or his representatives or assigns, a license to mine ore on said lands similar in all respects to the annexed unexecuted license.

It is expressly understood and agreed that the said parties of the first part reserve to themselves the right to explore for, mine, dig and carry away any gold or silver or ores other than iron, and they may give options on said lands, or any portion thereof, for exploring for such gold and si-ver and other ores and minerals (other than iron) to other parties; but such explorations or mining shall be conducted in a manner so as not to materially interfere with the mining and carrying away of iron ore under this agreement.

No extension of this option shall be valid unless in writing and signed by the authorized agent of said parties of the first part.

585 In witness whereof the parties hereto have set their hands the day and year first above written.

ARCTIC IRON COMPANY,
By W. P. HEALY, *Secretary.*
EDWARD BREITUNG.
A. A. ANDERSON.

(*Form of Lease Attached to Foregoing Option.*)

This indenture, made this first day of November, in the year one thousand eight hundred and eighty-six, between the ARCTIC IRON COMPANY, a corporation organized under the laws of the State of Michigan, and EDWARD BREITUNG, of Negaunee, Michigan, parties of the first part, and ANDREW A. ANDERSON, of Marquette, Michigan, party of the second part,

Witnesseth: That the parties of the first part do hereby license the party of the second part, his representatives and assigns, to enter upon the following-described land, to-wit: The southwest quarter

of the southeast quarter of section five in township forty-seven north of range twenty-six west, in the county of Marquette and State of Michigan, and explore for, mine, dig and carry away any and all iron ore that may exist on said land, and during the continuance of this license said party of the second part, his representatives and assigns, shall have the exclusive right to mine, dig and carry away all the iron ore so existing on said land, except as to the rights of the Pioneer Iron Company under a ninety-nine year lease hereinafter mentioned.

This license shall continue in force between the parties hereto, their representatives and assigns, for the term of twenty years from the date hereof, unless sooner terminated, as hereinafter provided.

In case the surface of said land, or any portion thereof, is
586 not owned by the parties of the first part, or by either of them, no exploration shall be made, nor shall any mining be carried on having a tendency to injure or destroy any improvements thereon, until the right to carry on such explorations or mining is duly obtained at the cost and expense of the party of the second part.

In consideration of this license the party of the second part hereby agrees to pay to said parties of the first part a ground rent on land occupied by the party of the second part in mining such iron ore, and also a royalty on all iron ore removed from said premises during the term of this license, as follows, that is to say:

Said party of the second part shall pay an annual ground rent of three thousand dollars payable quarterly, on the tenth days of January, July and October in each year during the term of this license, and shall, during term, work the mine or mines, on said lands, to their reasonable full capacity.

Said party of the second part, his representatives and assigns, shall, in addition to such ground rent, pay to said parties of the first part, their successors and assigns, a royalty on all iron ore removed from said land of one-tenth of the market value of such iron ore, loaded on the cars on any railroad track at or near the mine, at the time it is removed; and iron ore removed from said land, but not loaded on cars on railroad tracks, shall be paid for on the same basis; *provided*, that the minimum royalty on all iron ore removed from said lands under this license shall not be less than thirty-five cents per gross ton for number one standard hard iron ore, and twenty-five cents per gross ton on all other iron ores. Said royalty shall be due and payable on the tenth day of each month, for all iron ore removed from said land during the preceding calendar month. The royalty so paid in each year, to the extent of three thousand dollars, shall be applied in payment of the ground
587 rent for that year. When the ground rent in any year exceeds the royalty for such year, the excess of such ground rent shall be credited on the royalty in excess of three thousand dollars in any succeeding year or years.

One half of the ground rent and royalty shall be paid by said

party of the second part, his representatives or assigns, to said Edward Breitung, his heirs and assigns, and one half to the Arctic Iron Company, its successors and assigns, to be paid at such places and to such persons, as may be designated by each of said parties of the first part, from time to time.

Said party of the second part shall also, on or before the tenth day of each month in each year, furnish a written statement to said Edward Breitung, his heirs and assigns, and a duplicate thereof to the Arctic Iron Company, its successors and assigns, of the entire quantity of iron ore removed from said premises during the preceding calendar month, and the price for which such iron ore was sold, or contracted to be sold, loaded on the cars, at the mines, on said land; *provided*, that if such ore is forwarded to market unsold, then the said party of the second part shall, in such monthly report, state its market value at the time of its removal, loaded on the cars at the mine, as aforesaid. Said statement shall be verified by the oath of said party of the second part, or by his proper officer or agent having knowledge of the facts. But such statements shall not be evidence of the facts therein contained, in favor of the party of the second part, his representatives, successors or assigns, in any action, suit or proceeding which may be brought against him by said parties of the first part, or either of them, their successors or assigns.

Said parties of the first part, or either of them, through their officers, their successors or assigns, shall have the right, from
588 time to time, during reasonable business hours, to examine the books and papers of the party of the second part, his representatives, successors or assigns, for the sole purpose of ascertaining the quantity of iron ore mined from time to time, and its market value, loaded on the cars at the mine, and for that purpose may depute one or more accountants to make such examinations as often as may be directed by the parties of the first part, or either of them, their successors or assigns, and any continued and intentional violation of this agreement, allowing such inspection of such books and papers by the party of the second part, his successors, representatives or assigns, shall work a forfeiture of this license, at the option of said parties of the first part, or either of them, their successors or assigns.

The party of the second part, his representatives, successors and assigns, shall pay all taxes and assessments, ordinary or extraordinary, general or specific, which may be assessed on said lands; on the iron ore mined thereon, and on the rent or royalty issuing from said ore or lands all such taxes and assessments shall be paid before any action, suit or proceeding is commenced by the public authorities for the recovery of such taxes or assessment; *provided*, that where the surface is not owned by either or both of the parties of the first part, at the date hereof, then said party of the second part, his successors, representatives and assigns, shall not be liable, by reason of anything herein contained, to pay the taxes or assessments

which may be levied on such surface improvements so belonging to third parties.

The party of the second part, his representatives or assigns, may surrender this license at any time by giving thirty days' notice in writing, to the parties of the first part, their successors or assigns, and by executing, acknowledging and recording a surrender
589 of such license in the registry of deeds of said county of Marquette, and by paying up in full all royalty, rent, taxes or assessments that may be then due or payable according to the terms hereof.

A gross ton shall consist of twenty-two hundred and forty pounds avoirdupois, and the railroad weights of the railroad company over whose road said ore may be transported shall be *prima facie* deemed to be correct. The possession of such portion of said land as is not required for mining purposes by said party of the second part, his representatives or assigns, shall remain in the surface owner, and said parties of the first part shall have the right to give licenses or leases for mining gold, silver, copper or any other ore or mineral (except iron ore) thereon to any other party or parties whatsoever, without the consent of said party of the second part, his representatives, successors or assigns, but so as not to materially interfere with the mining and carryiug away of iron ore under this license.

In case said party of the second part shall fail to make such monthly reports of the ore removed, or fail to pay the ground rent, or royalty to each of said parties of the first part when due, as aforesaid, or shall fail to pay the taxes or assessments when due, as aforesaid, then, in either of such cases, the parties of the first part, or either of them, may declare this license forfeited, null and void, by giving written notice to the party of the second part, his successors and assigns.

Such notice may be personally served on said party of the second part, his agent or superintendent, found within the county of Marquette, or if they are not to be found in said county, then by written notice, posted on said lands so occupied for mining purposes, and by letter addressed to said party of the second part, his successors, representatives or assigns at Nagaunee, Michigan.
590 If said party of the second part shall, within sixty days after the service or mailing of such notice, pay or tender the ground rent and royalty due at the time of the service of said notice, then such forfeiture shall be avoided and set aside; *provided*, that whenever any default occurs in the payment of such rent or royalty and notice of forfeiture is given, as aforesaid, said party of the second part, his successors, representatives or assigns, shall not remove any iron ore or other property from said lands until the ground rent and the royalty in default is fully paid, and said parties of the first part shall have a lien on such iron ore and on all fixtures, tools and machinery of said party of the second part, his successors or assigns, on said land, for the ground rent and royalty so in default, and may immediately, on such default, proceed to enforce such lien.

If said party of the second part, his successors, personal representatives or assigns, shall suffer said land, or any part thereof, to be advertised for sale, for non-payment of any taxes or assessments, it shall, *ipso facto*, work a forfeiture of this license, at the option of said parties of the first part.

Whenever this license is terminated by surrender, forfeiture or expiration of term, the party of the second part, his successors and assigns, shall and will peaceably leave, and yield up unto the said parties of the first part all mines opened and worked on said lands, and all the surface rights which they may have acquired, and shall pay all ground rent, royalty, taxes and assessments which may then be due, and thereupon said party of the second part, keeping and reserving his covenants and agreements hereinbefore set forth, shall have thirty days after such termination in which to remove the fixtures and machinery, but said party of the second part, his successors, representatives or assigns, shall not remove nor impair
591 any supports, timbers or frame work of shafts proper for the use and maintenance of such mines, or the approaches thereto.

The covenants, agreements and conditions of this license shall run with the land, and shall be binding on the successors and assigns of the party of the first part, and upon the heirs, executors, administrators, successors and assigns of the party of the second part.

Royalty and ground rent shall commence to run from the time written application is made for a license and not from the date of this license. This license is subject to the ninety-nine year lease executed in 1857 by Charles T. Harvey to the Pioneer Iron Company.

In witness whereof, the parties of the first part have caused their corporate seals to be hereunto affixed and these presents to be signed by their respective presidents and secretaries, and the said part- of the second part ha- — the day and year first above written.

Signed, sealed and delivered in presence of

Mr. SHAULL: This is objected to as immaterial and irrelevant.

Defendants' counsel then offered in evidence a mining option for mining iron ore, dated June 2, 1886, by the Arctic Iron Co. and Edward Breitung to Rob't H. Taylor. The signatures of W. P. Healy for the Arctic Iron Co. and Edward Breitung are admitted. The option bears an extension signed by W. P. Healy, extending it from Sept. 2, 1886, to December 1, 1886.

Paper marked Exhibit 70. This paper, option and lease are in exactly the same form as Exhibit No. 69.

To the introduction of which paper counsel for complainants objected as immaterial and irrelevant.

Defendants' counsel then offered in evidence a mining
592 option for mining iron ore, dated Nov. 30, 1886, issued by the Arctic Iron Co. and Edward Breitung to Robert H. Taylor, Joseph King and Alfred Phillips. The signatures of W. P.

Healy and Edward Breitung are admitted. This contained the usual form of lease attached to the option.

Paper marked Exhibit 71. This option and lease are in exactly the same form as Exhibit No. 69.

To this counsel for complainants objected as immaterial and irrelevant.

Defendants' counsel then offered in evidence a mining option, dated January 26, 1886, issued by the Arctic Iron Co. and Edward Breitung to W. D. Rees and others. The signatures of the Arctic Iron Company by W. P. Healy and Edward Breitung and W. D. Rees are admitted. This option also contains an extension signed by W. P. Healy. Attached to this option is a form of lease to be given under certain terms.

Paper marked Exhibit 72. This option and lease are in same form as Exhibit No. 69.

Counsel for defendants objected to this option as immaterial and irrelevant.

Mr. HAYDEN: It is admitted that the clause written in there referring to the lease of Harvey to the Pioneer Iron Co. is in Mr. Healy's handwriting?

Mr. ELDREDGE: I do not admit that.

Mr. HAYDEN: I will ask you, as a witness, whether that is true?

Mr. ELDREDGE: I don't know. That seems to be Mr. Healy's handwriting.

Mr. HAYDEN: It is admitted that in the option to Andrew A. Anderson, to Fred. Meyer and Morris Webber, and to Robert H. Taylor, the clause written in the form of lease referring to the 99 year lease to the Pioneer Iron Co. is in Mr. Healy's hand-
593 writing. The fourth one does not appear to be, but it is in the same writing as the instrument itself.

I offer a letter of Mr. Healey's, testified to as in his handwriting, dated Nov. 26, 1888, to Alex. Maitland of Negaunee. The letter is headed "Arctic Iron Co. by Mary Breitung, president; W. P. Healy, secretary and treasurer."

Mr. ELDREDGE: That is objected to as immaterial and irrelevant.

Paper marked Exhibit 73 and is as follows:

MARQUETTE, MICH., *Nov.* 26, 1888.

Alex. Maitland, Esq., Negaunee.

DEAR SIR: I enclose form of sandstone license and option.

I wish to again call Mr. Canda's attention to the deed of the Buffalo and Sam Mitchell. The Breitung estate is beginning to find fault with me, not only in this, but in the other matters in controversy between the Pioneer and Arctic. Since I saw you last the Breitung estate insists on this small matter being closed at once, not for the amount involved, but they think or say that Mr. Canda is treating the Arctic unfairly in *retaining money collected for the Arctic and not paying it over, nor giving the deed in lieu thereof.* Probably

Mr. Canda does not take that view, but the Breitung estate does. The money was collected by the Pioneer acting as the agent of the Arctic. It was verbally agreed that the Pioneer could keep the money by giving a deed of an undivided half of the Sam Mitchell and Buffalo. The transaction occurred over two years ago, and yet the Pioneer hangs on to our money and refuses to give us the deed. Now I hereby make a formal demand on you as agent of the Pioneer either to pay the money or deliver the deed at once. I must put myself right in this matter with my associate, the Breitung estate, and wish that you will forward this letter to Mr. Canda with a request that he lay it before the board of trustees.

Yours truly,

W. P. HEALY,
Sec'y Arctic I. Co.

594 Mr. HAYDEN: I offer in evidence this deed from the Arctic Iron Co. to the Pioneer Iron Co. dated Sept. 14, 1889, and recorded Feb'y 6, 1890, in Liber 21 of Deeds, pages 120 and 121. I offer in evidence that record of this deed.

Judge BROWN: It is objected to as immaterial and irrelevant.

Received in evidence, marked Defendants' Exhibit AB, and is as follows:

(*War. Deed, Arctic Co. to Pioneer.*)

This indenture, made this fourteenth day of September, in the year of our Lord one thousand eight hundred and eighty-nine, between the Arctic Iron Company, a corporation organized and existing under and pursuant to the laws of the State of Michigan, party of the first part, and the Pioneer Iron Company, also a corporation organized and existing under and pursuant to the laws of said State, party of the second part.

Witnesseth, that the said party of the first part, for and in consideration of the sum of one dollar, to it in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold, remised, released, aliened and confirmed, and by these presents does grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part, and to its successors and assigns forever, all its right, title and interest in and to all ores and minerals now existing or that may be hereafter discovered on or in the following described land, situate, lying and being in the county of Marquette and State of Michigan, known and described as follows: Commencing at a point on the south side of the county road from Negaunee to Marquette, said point being two hundred and fifty-one feet south of the center of sec. six, township forty-seven north, range twenty-six west, measured along the north and south quarter section line of said sec. six; thence south along aforesaid north and south quarter section line of section six, four hundred and two feet to an iron post; thence south thirty-two degrees and forty-five minutes west five

hundred and ninety-two feet to an iron post in the center of Partridge creek; thence westerly along the center of Partridge creek to the west boundary line of the northeast quarter of the southwest
595 quarter of aforesaid section six; thence north along the aforesaid west boundary line of the northeast quarter of the southwest quarter of section six two hundred and eighty-three feet; thence north eighty degrees, east one hundred and twenty-two feet; thence north eighty degrees east along the south side of the aforesaid county road twelve hundred feet to the place of beginning. Containing nineteen and forty-eight one-hundredths acres more or less.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest and demand whatsoever of the said party of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances; to have and to hold the said premises as above described with the appurtenances unto the said party of the second part, and to its successors and assigns forever. And the said party of the first part, for itself and its successors, does covenant, grant, bargain, and agree to and with the said party of the second part, its successors and assigns, that at the time of the ensealing and delivery of these presents it is well seized of the premises above described as of a good, sure, perfect, absolute and indefeasible estate of inheritance in the law in fee simple; and that the said lands as above described are free from all incumbrances whatever; and that the above bargained premises in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against all and every person or persons, lawfully claiming, or to claim, the whole or any part thereof, it shall and will forever warrant and defend.

In witness whereof, the said party of the first part hath caused its corporate seal to be hereunto affixed and the same to be attested by its president and secretary the day and year first above written.

ARCTIC IRON COMPANY,
By MARY BREITUNG, *President.*
WILLIAM P. HEALY, *Secretary.*

[CORPORATE SEAL.]

596 Signed, sealed and delivered in presence of

As to Mary Breitung:
LIZZIE MERRY.
N. M. KAUFMAN.
As to W. P. Healy:
MINNIE M. RUSSELL.
ALBERT E. MILLER.

STATE OF MICHIGAN,
County of Marquette, } ss:

On this twenty-eighth day of January, A. D. 1890, before me a notary public in and for said county, personally appeared William P. Healy, to me personally known to be the secretary of the within named Arctic Iron Company, which company executed the within instrument, and he, the said William P. Healy, declared that he affixed the corporate seal of said Arctic Iron Company and executed the within instrument as the free act and deed of said Arctic Iron Company, and of himself as such secretary. I further certify that I know the annexed to be the corporate seal of said Arctic Iron Company.

ALBERT E. MILLER,
Notary Public in and for said Marquette County.
[NOTARIAL SEAL.]

Mr. HAYDEN: I wish to ask a question of Mr. Shaull as a witness, whether this letter is a letter of Edward L. Breitung, a letter dated July 11, 1899?

Mr. SHAULL: This paper which you show me, purporting to be from Edward N. Breitung to Samuel Redfern, Negaunee, Mich., appears to be signed by Mr. Wallace, with a rubber stamp, for Mr. Breitung, Mr. Wallace having written his name in this form: "Edward N. Breitung, per James Wallace, secretary." That is Mr. Wallace's signature; further than that I don't know anything about it. I never saw it before.

Mr. HAYDEN: Who is this Mr. Wallace?

Mr. SHAULL: He is an employé of Mr. Breitung.

Mr. HAYDEN: The same Wallace who was on the stand yesterday?

597 Mr. SHAULL: The same Wallace who was on the stand yesterday.

Mr. HAYDEN: Does he, as secretary, have charge of Mr. Breitung's correspondence?

Mr. SHAULL: I so understand it. I have known of his writing numerous letters for Mr. Breitung at different times. I know nothing about the statement attached.

Mr. HAYDEN: I offer this in evidence.

Mr. ELDREDGE: It is objected to as irrelevant and immaterial and not properly proved.

Mr. Hayden then testified that prior to the trial of the tax case, or during the trial of the tax case, mentioned in this letter, which was a tax case tried in this court involving the taxes of 1896, the Breitung estate and the Negaunee Iron Company were parties with the Pioneer Iron Company and the Arctic Iron Company and the Iron Cliffs Company as to a division of the expenses of that litigation so far as it involved the obtaining of testimony, records, etc., all

such expenses as were involved to the several taxpayers who were parties to the suit, aside from attorneys' fees.

Mr. SHAULL: That statement is objected to as immaterial and irrelevant.

Mr. HAYDEN continues: This letter and statement, on the receipt of it by Mr. Redfern, at least immediately after the date of it, was forwarded to me by Mr. Redfern as a statement pursuant to that understanding between these several parties.

Mr. HAYDEN: I offer the statement and letter in evidence.

Mr. SHAULL: It is all objected to as immaterial, irrelevant and improper.

The statement and letter introduced in evidence and marked Exhibit 74 and are as follows:

598

MARQUETTE, MICH., U. S. A., *July* 11, 1899.
Mailed 5 p. m.

Mr. Samuel Redfern, Negaunee, Mich.

DEAR SIR: Herewith I hand you a statement of expenses in the Negaunee tax case for taxes of 1896, showing a balance due me of $269.34:

Iron Cliffs Company	$157.33
Pioneer Iron Company	92.59
Pioneer & Arctic Iron Company	166.52
	$416.44
Less paid by Iron Cliffs Company	147.10
	$269.34

for which I shall be pleased to receive your check at an early date.

Yours truly,
EDWARD N. BREITUNG,
Per JAS. WALLACE, *Sec.*

J. W.

Statement of Expenses Paid by Each Party Interested in the Nagaunee Tax Case for the Taxes of 1896.

Paid by James Pendill:

Livery	$1.50	
Child's art gallery	20.74	
Railroad and street car fare	4.80	
Hotel	3.00	
Four days' time at $8.00	32.00	
		$62.04
Paid by James Connolly:		
Sundry expenses	$5.00	
		5.00

Paid by Mrs. Mary Kaufman:

I. A. Clark for map	$5.00	
Capt. Roberts, services	50.00	
		55.00

Paid by Samuel Redfern, land agent:

For services making map and examining secs. 7 and 8 for topography	$55.50	
Mar., '99, witness fees, John Rough	13.05	
599 Mar., '99, witness fees, James Matthews	2.30	
Mar., '99, witness fees, C. Vincent	2.30	
Mar., '99, witness fees paid constable	1.60	
For services and railroad fare, Jas. Matthews	13.00	
For services and railroad fare, Thos. Pascoe	15.50	
For services and railroad fare, Chas. Vincent	10.00	
Board at Hotel Marquette for John Rough, Jas Matthews, Chas. Vincent and Mr. Redfern	21.50	
Refreshments and dinner for witnesses	4.85	
Printing by Mining Journal Co	7.50	
		147.10
Forward	$269.14	$269.14

Paid by E. N. Breitung:

A. B. Eldredge for telegrams	$5.94	
J. M. Edgerton, expenses to Menominee	9.35	
J. M. Edgerton, traveling expenses and hotel	11.70	
John Carlson, sheriff and witness fees	118.70	
J. M. Edgerton for services 34 days at $10.00	340.00	
Jas. Wallace, 5 trips to Negaunee and Ishpeming	10.60	
Feb. 10, for 1 blank tax roll and express	1.15	
Feb. 12, S. E. Byrnes for copying 1896 tax roll	53.00	
Mar. 2, express on tax roll to Negaunee	.25	
Mar. 10, express on tax roll from Negaunee	.26	
Mar. 23, express on tax roll to Negaunee	.25	
Mar. 27, Thos. Carmichael, services and expenses	9.75	
April 8, Miss Blackwood, typewriting	1.50	
April 14, G. C. Higbee	96.60	
Jan. 19, Thos. Gillespie, expenses to Negaunee	2.00	
		661.05
		$930.19

600

			Less Cr.	Bal. due.
Percentage of expenses to total of taxes declared void	.0003546			
James Pendill, am't taxes declared void	$2,628.37	$93.22	$62 04	$31.18
Jas. Connolly, am't taxes declared void	873.77	30.99	5.00	25.99
Iron Cliffs Co., am't taxes declared void	4,435.95	157.33	147.10	269.34
Pioneer Iron Co., am't taxes declared void	2,610.59	92.59		
Pioneer & Arctic Iron Co., am't taxes declared void	4,695.04	166.52		
Forward	$15,243.72	$540.65	$214.14	$326.51

			Less Cr.	Bal. due.
Forward	$15,243.72	$540.65	$214.14	$326.51
Negaunee Iron Co., am't of taxes declared void	9,919.38	351.80	55.00	296.80
E. N. Breitung, am't of taxes declared void	1,064.20	37.74	37.74	
	$26,227.30	$930.19	$306.88	$623.31

Mr. HAYDEN: This was on the auditor general's petition in reference to taxes in the city of Negaunce, in which objections were filed by the Pioneer Iron Company, Arctic Iron Company, Iron Cliffs Company, Edward Breitung, the Negaunee Iron Company and the Pendill estate. I introduce the files in that case to show.

Mr. ELDREDGE: You need not introduce the files. We will let that statement appear as showing it.

Mr. HAYDEN: The case was heard in the supreme court when these parties joined together in the record, prepared on behalf of the State.

Mr. ELDREDGE: The auditor general appealed, which brought all the parties in the proceeding. But the parties never joined except in the way Mr. Hayden states, to bear the expenses.

COURT: Do you want the record in?

Mr. HAYDEN: Yes, I do, for the purpose of showing what joint action was had between the parties and what the nature of the controversy was; to show that the lands involved were in the city
601 of Negaunee, and that the Pioneer Iron Company was in that controversy, and its claims of ownership to a large amount of land in the city of Negaunee. I offer the files and records in the matter of the auditor general's petition in regard to the delinquent taxes of 1896.

Mr. SHAULL: It is all objected to as immaterial, incompetent and irrelevant.

Mr. ELDREDGE: I move that it all be stricken out from the reporter's minutes.

The record in this case on appeal in the supreme court is entitled "In the matter of the petition of the auditor general to sell certain lands for delinquent taxes assessed thereon.

Hearing on objections to the tax, by Pioneer Iron Company, Arctic Iron Company, Iron Cliffs Company, Negaunee Iron Company, Flavia N. T. Pendill *et al.*

The Pioneer Iron Company and Arctic Iron Company joined on objections. The other parties filed separate objections, but all the cases were tried as one.

Mr. HAYDEN: In connection with this same controversy I want to put in the title page of the record in the supreme court. I have not got the book here, to show that all these companies were put in by them as the same parties to the case.

I offer from the files of the Pioneer Iron Company a certified copy of an act to authorize the Iron Cliffs Company to acquire and hold certain lands and acquire and hold certain stock in certain companies. It is certified to by the secretary of state, under the great seal of the State of Michigan. It is certified on the 26th day of March, 1867, and I produce it from the files of the Pioneer Iron Company.

Mr. SHAULL: It is objected to as immaterial and irrelevant.

602 Paper marked Defendants' Exhibit 75, and is as follows:

An act to authorize the Iron Cliffs Company to acquire and hold certain lands and to acquire and hold stock in certain companies.

SECTION 1. The people of the State of Michigan enact,

That the Iron Cliffs Company shall have power to acquire and hold the lands in the counties of Marquette and Washington, formerly held by the St. Mary's Canal Mineral Land Company, within its said counties, in addition to such lands as the said Iron Cliffs Company is now authorized by law to hold; and shall also have power to acquire and hold such lands as it may deem necessary for the purpose of manufacturing charcoal iron, not exceeding ten thousand acres for each furnace, which it may construct or operate; and also to acquire and hold stock in any company formed for manufacturing pig iron, wrought iron or steel; *provided*, that nothing in this act shall exempt said lands when acquired and held by said Iron Cliffs Company, from either State, county, township or municipal taxes, to the same extent according to their value, as other real estate is taxed in said counties of Marquette and Washington.

SECTION 2. This act shall take immediate effect.

DWIGHT MAY,
President of the Senate.
P. DEAN WARNER,
Speaker of the House of Representatives.

Approved March 26, 1867.

HENRY H. CRAPO.

(Certificate of secretary of state attached.)

Mr. HAYDEN: I wish to call attention to the large number of conveyances we introduced yesterday. I wish to put in the record the further fact relating to all these, that in all these conveyances except one, the deeds reserve the minerals to the Pioneer Iron Com-

pany. That one is a deed from the Pioneer Iron Company to Peter White, recorded in Liber W, 410, dated August 6, 1881.
603 That was a quit-claim deed. In all the others the Pioneer Iron Company reserved to itself in these deeds the minerals in the land.

Now, I also offer the following records of deeds from the books here:

James Saunders and wife to the Pioneer Iron Company, recorded in Liber X, 482, dated May 4, 1882, covering land situated in the city of Negaunee.

Mr. SHAULL: This deed is objected to as immaterial and irrelevant.

Mr. HAYDEN: A deed from Samuel Redfern and wife to the Pioneer Iron Company, recorded in Liber 32 of Deeds, 395, dated December 31, 1897.

The Cleveland Cliffs Iron Company to the Pioneer Iron Company, recorded in Liber 32 of Deeds, 401, dated December 31, 1897. There are no reservations in any of these deeds. These deeds also cover land situate in Negaunee.

GEORGE HAYDEN, recalled as a witness on behalf of defendants, further testified as follows:

Re-direct examination by Mr. HOYT:

I was present at the taking of the testimony of C. T. Harvey in Cleveland, the only deposition in this case. The deposition is filed here on the part of the defendants.

Q. In that testimony Mr. Harvey referred to a certain agreement or lease, dated April 22, 1857, from himself to the Pioneer Iron Company. I will ask you to take that paper and testify as to whether or not that is the instrument referred to?

Mr. ELDREDGE: That is objected to as irrelevant and immaterial, and because that is not the proper way to prove an exhibit presented to a witness on the taking of the deposition.
604 Mr. SHAULL: And for the further reason that the paper here shown the witness and identified, Mr. Hayden was requested to allow myself to take the paper for cross-examination, as appears from the deposition of the witness. He refused, and refused to allow the witness to hand me the paper for the purpose of cross-examination, so that I was unable to obtain the right to cross-examine the witness as to the paper, as appears from the deposition.

A. This paper was shown Mr. Harvey, during his examination by me, as representing the Pioneer Iron Company. I handed the paper to Mr. Harvey and he identified it as having been written throughout by himself and signed and executed by himself.

Mr. ELDREDGE: The testimony as to who wrote it is objected to for the further reason that it is mere hearsay.

A. And he made the explanation which appears in his deposition, about it. The paper was then handed to the notary for identification, and marked by the notary "J. A. F. 2," as appears on the face of the paper. After identification the paper was handed to Mr. Harvey to read, and after he had read it through, he made the explanation which appears in his deposition, and then the paper was immediately handed back to me. I did not have it attached to the deposition, because it is the original paper, which we considered of great value, and I did not care to have it put in the deposition and intrusted to the mails. And I have retained the paper in my possession ever since, in the exact condition in which it was when Mr. Harvey was shown the paper and examined and read by him.

Mr. HAYDEN: I now offer the paper in evidence as the paper identified by Mr. Harvey.

Mr. ELDREDGE: That is objected to. It was either in evidence at the time, or else it is not properly identified or proven.

605 Paper received in evidence and marked Exhibit 76, and is as follows:

This indenture, made this 22d day of April, in the year 1857, between Charles T. Harvey, of Marquette county, State of Michigan, of the first part, and the Pioneer Iron Company (a corporation existing by virtue of the laws of the State of Michigan, and doing business in said county and State) of the second part.

Witnesseth, that the party of the first part for and in consideration of the sum of one dollar, the receipt whereof is hereby acknowledged and confessed, has bargained and conveyed, and by these presents does bargain and convey, certain rights and privileges hereinafter mentioned, with the limitations and provisions thereto annexed, on, in and to the lots or parcels of land known and described as follows, to-wit:

The southwest quarter of the southeast quarter and the southwest quarter of section No. five (5), the southeast quarter, and all of the east half of the southwest quarter not now already owned in fee by the party of the second part hereto of section No. six (6). The north half of northeast quarter, and the northeast quarter of the northwest quarter, of section No. seven (7), the northwest quarter of the northwest quarter of section No. eight (8), all in township No. forty-seven (47) north of range No. twenty-six (26) west, containing five hundred and eighty (580) acres in the same. Also the west half of the southwest quarter of section No. thirty-one (31) (fractional) in township No. forty-eight (48) north of range No. twenty-six (26) west, containing sixty-six 29-100 (66 29-100) acres in the same.

All said lands being situated in the county of Marquette and

State of Michigan, amounting as above described in all to six hundred and forty-six 29-100 (646 29-10.) acres.

The aforesaid rights and privileges on, in and to said lands being:

First. The right to cut and remove all the timber and wood standing or otherwise thereon, for purpose of converting the same into charcoal for manufacturing purposes or such other uses as may be desirable to the party of the second part. Such wood and timber to be used and removed within five years from date, when within that period it shall suit the convenience of the party of the second part thus to do. Provided, however, that after clearing its own land in fee, on section six, T. 47, R. 26, it shall next remove the timber from the balance of land in that section herein described until it is all removed. Then it shall remove that on section seven (7) herein mentioned. Then that on section eight (8) in like manner. Then next in succession that on section five (5) after clearing its own land on the same, and lastly those in section thirty-one (31), in township 48 of range 26 west. This stipulation, however, at all times to be subject to future agreements between the parties hereto. Provided further, that as far as may be consistent with the interest of said company, it being the judge in these respects, the land when the timber is removed shall be left in a favorable condition for improvements, particularly with a view to the erection of other furnaces thereon.

606

Second. The party of the second part shall have in perpetuity the right, free of charge (except for land damages hereinafter mentioned), to mine, obtain and use, any ores or marbles found on said lands, or on any other lands now owned by the party of the first part in either of the townships above mentioned, provided it shall not mine or obtain any ores on said lands except what it shall actually convert into merchantable iron in its own establishment. It shall also be at its own expense for mining, and shall not use or injure the improvements placed upon the lands by others without paying just and equitable damages therefor. Neither shall it be entitled to take any more land to occupy than is clearly necessary to open the mine for the iron ore or marble to be obtained readily therefrom, and shall pay $12 per acre for unimproved lands which it may require.

These privileges shall only descend to the party of the second part's successors in corporate succession.

The party of the second part agrees not to in any wise convey the lands mentioned except with a reservation of these rights and privileges to the party of the second part.

These rights and privileges are made subject, however, to the terms of the prior deed of James L. Reynolds and wife to the party of the first part by which he acquired title to the lands mentioned, which reservations were known prior to the executing of this indenture.

607 In witness whereof, the party of the first part has hereto set his hand and seal the day and year first above written.

CHARLES T. HARVEY. [SEAL.]

Sealed and delivered in presence of
W. H. PEARSE.
G. L. FORD.

STATE OF NEW YORK,
City and County of New York, } ss:

Be it remembered, that on this 8th day of May, A. D. 1857, before me the subscriber, a commissioner duly appointed by the governor of the State of Michigan and authorized to take the acknowledgment of deeds, etc., to be used and recorded therein, personally appeared Charles T. Harvey, known to me to be the individual named in and who executed the foregoing instrument, and he acknowledged to me that he executed the same as his free act and deed for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal at the city of New York, the day and year aforesaid.

GORDON L. FORD,
Commissioner for the State of Michigan.
[COMMISSIONER'S SEAL.]

Cross-examination by Mr. ELDREDGE:

I refused to allow counsel to have it to cross-examine the witness in connection with it, because I had not yet put it in evidence, and I didn't know that I would put it in evidence, until after the counsel himself had asked Mr. Harvey to explain what it was.

Mr. HAYDEN: The complainants have put in the deposition of Chas. T. Harvey. There was no reservation in offering the deposition, and I suppose the whole thing is in. On our part, to be perfectly safe, we offer the direct examination of the deposition of Mr. Charles T. Harvey.

JAMES H. HOYT, recalled for defendants, further testified:

608 Direct examination by Mr. ELDREDGE:

I don't remember what the capital stock of the Iron Cliffs Company is. I have not any idea about it at all as you ask me right now. I don't think the par value of the shares is $100. I think it is $50. The capital stock of the Cleveland Cliffs Company is $5,500,000. I cannot state definitely what amount of that has been issued. Approximately something over $3,000,000. The Cleveland

Cliffs Company owns all the stock of the Iron Cliffs Company and of the Cleveland Iron Mining Company.

Counsel for complainants then offered in evidence a certified copy of the articles of incorporation of the Cleveland Cliffs Iron Company, dated May 9, 1891, signed by Wm. G. Mather, James H. Hoyt, A. C. Dustin, Fred A. Morse and Henry S. Sherman, properly certified to by Wm. A. Oakley, secretary of state of the State of West Virginia; under the seal of the State of West Virginia, under date of August 11, 1891, and signed by Wm. Oakley, secretary of state.

Mr. HOYT: We object to that as incompetent, immaterial and improper, and not rebuttal.

Said exhibit reads as follows:

COMPLAINANTS' EXHIBIT K 2.

Certificate of Incorporation.

[SEAL.]

I, Wm. A. Ohley, secretary of state of the State of West Virginia, hereby certify that an agreement, duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me, which agreement is in the words and figures following:

We, the undersigned, agree to become a corporation by the name of THE CLEVELAND CLIFFS IRON COMPANY,

For the purpose of conducting a general manufacturing
609 business of all articles made from products of gold, silver, iron ore and of all other ores of metals or minerals, and the smelting, refining and reducing of all and any such ores and minerals and the manufacture of all products thereof;

For the purpose, also, of manufacturing lumber and all articles made out of wood or both metals and wood;

For the purpose, also, of manufacturing engines, boilers, machinery, architectural structures, and agricultural implements and all machinery and mechanical appliances and apparatus of all kinds, including locomotives, vessels, bridges and the like; with the right to own patent rights and to manufacture patented novelties and devices of all sorts; with the right, also, to manufacture coke and any and all products of coal or minerals;

For the purpose, also, of mining gold, silver, iron ore, coal and all other minerals or ores of metals; and,

For the purpose, also, of conducting a general contracting and merchandising business, dealing in, and selling such ores or any of them and all articles manufactured out of the products of all or any of such ores or minerals;

With the right, also, to own, control and acquire and, for the purpose of owning, controlling and acquiring, by lease, purchase, contract or otherwise, all real estate, or interests therein, mines, mining and mineral rights and other property situated anywhere in the United States or Territories or in any foreign countries, suitable or necessary for the purposes above expressed or any of them;

For the purpose, also, of subscribing for, purchasing and owning the stocks, bonds or securities of any company manufacturing or producing any articles or materials to be used in the business of the said The Cleveland Cliffs Iron Company, or dealing in any articles or materials manufactured or produced by said last named company or used in the business thereof; or the stock, bonds or securities of any corporation organized for the purpose of constructing or operating a railroad or other work of internal improvement, or the stock, bonds or securities of any transportation company needed or convenient for the transportation of any of the ores, minerals or articles produced or manufactured or dealt in by the Cleveland Cliffs Iron Company or convenient for the proper transaction of its business;

610 With power, for any and all of the above purposes, to borrow money and issue, from time to time, to any extent necessary or convenient in the judgment of the board of directors of said company, the negotiable, registered, coupon or other bonds or obligations of the company, and to secure the payment of the principal and interest of the same by mortgaging or pledging all or any part of the property, rights, franchises or privileges then owned or which may be hereafter owned or acquired by said company; and,

With full power to do, and for the purpose of doing, also, all other things proper, necessary, convenient or incident to the powers and purposes above specifically expressed or any of them.

Which corporation shall keep its principal office, or place of business, in the city of Chicago, county of Cook, State of Illinois, and is to expire on the first day of May, A. D. 1941.

For the purposes of forming such corporation, we have subscribed the sum of five hundred dollars ($500) to the capital stock thereof, and have paid in on the said subscription the sum of five hundred dollars ($500), and desire the privilege of increasing said capital, by the sale of additional shares from time to time, to five millions of dollars ($5,000,000) in all.

The capital stock so subscribed for is divided into shares of one hundred dollars ($100) each, which are to be held by the undersigned, respectively, as follows, that is to say:

By William G. Mather, of Cleveland, Ohio, one share.
By James H. Hoyt, of Cleveland, Ohio, one share.
By A. C. Dustin, of Cleveland, Ohio, one share.
By Fred A. Morse, of Cleveland, Ohio, one share.
By Henry S. Sherman, of Cleveland, Ohio, one share.

And the capital stock to be hereafter sold is to be divided into shares of like amount.

Given under our hands this ninth day of May, A. D. 1891.

WM. G. MATHER. [SEAL.]
JAMES H. HOYT. [SEAL.]
A. C. DUSTIN. [SEAL.]
FRED A. MORSE. [SEAL.]
HENRY S. SHERMAN. [SEAL.]

611 Wherefore, the corporators named in the said agreement who have signed the same, and their successors and assigns, are hereby declared to be from this date until the first day of May, nineteen hundred and forty-one, a corporation by the name and for the purposes set forth in said agreement.

Given under my hand and the great seal of the said State at the city of Charleston, this fourteenth day of May, eighteen hundred and ninety-one.

WM. A. OHLEY,
Secretary of State.

[G. S.]

STATE OF WEST VIRGINIA,
Office of Secretary of State.

I, Wm. A. Ohley, secretary of state of the State of West Virginia, hereby certify that the foregoing and annexed writing is a true and correct copy of the certificate of incorporation of the Cleveland Cliffs Iron Company, a corporation created, formed and organized under the laws of this State, as appears from the record of corporations in my said office.

Given under my hand and the great seal of the said State at the city of Charleston, this eleventh day of August, 1891.

WM. A. OHLEY,
Secretary of State.

[G. S.]

A. B. ELDREDGE, recalled for complainants, further testified as follows:

Direct examination by Mr. SHAULL:

Q. I show you a paper, dated December 16, 1890, at Chicago, Ill., and signed by William P. Healy, and marked "copy," and ask you what that is?

A. Well, I can't say that.

Q. I will ask you if you have seen a copy, of which that is a copy, in Mr. Healy's handwriting?

A. I have seen a paper entirely in Mr. Healy's hand-
612 writing, if I remember correctly, and I think I am not mistaken about that. So far as I can judge from reading this paper, this is a copy. I saw it at the time it was first written. It was written with reference to the insertion of that clause in a certain form of lease which he was preparing for some company. I think for the Negaunee Iron Company; a joint lease to the Negaunee Iron Company, Mary Breitung, Edward Breitung and Hewitt, and Ramsey and Jones.

Mr. HAYDEN: I object to the testimony as incompetent, irrelevant and immaterial.

Mr. SHAULL: I now offer the paper in evidence, and ask the privilege of putting in the original, if found, without further proof as to the handwriting.

Mr. HOYT: That is objected to as incompetent and immaterial, and we shall object to the introduction of the original, if it is found, upon the same ground.

Paper received and marked Exhibit L 2, and is as follows:

(The original was afterward found and produced at the argument of the cause, and Exhibit L 2 is a true copy thereof.)

Duluth, South Shore & Atlantic railway.

Legal department.

W. P. Healy, general counsel.

CHICAGO, ILL., *December* 16, 1890.

N. M. Kaufman, Esq., New York.

DEAR SIR: It was the intention, of course, to have the same clause on both copies of the Arctic option to Cole and I herewith return it for Mrs. Breitung's signature. I also return blank leases of Manganese to Grand Rapids Iron Co., also Mr. Eldredge's letter to you. This lease only runs to October, 1891, hence the mention of the 99 year lease, even if valid, would not be essential.

613 But in my opinion it is wholly void, and this opinion was concurred in by Mr. Ball when I consulted him over a year ago.

I talked with Mr. Eldredge about it a few months ago when he sent me the blank form of lease prepared by him in which he inserted a clause making it subject to the 99 year lease "*if still in force, but not otherwise.*" He contended that a clause of that kind would admit nothing, could do no harm, and would be a protection if the 99 years lease was held valid by the courts.

He claimed that the Pioneer Iron Company was reorganized and hence that the 99 years lease was revived.

I could not agree with that opinion and I came to the following conclusions:

1. The Pioneer Iron Company's charter expired in April, 1887. It then ceased to exist as corporation for the purpose of carrying on business and the lease then came to an end, because it was unassignable, and there was then no successor to hold it. It was a lease in which the Pioneer had virtually a life estate, and if there were no successors, it would and did lapse because a lease like a deed cannot remain in existence where there is no one who can legally own it.

2. Even if the Pioneer is now revived by proceedings before the secretary of state of which the Breitung estate had no notice either actual or constructive, the lease could not be revived. It had already disappeared. No person's property rights can be affected by pro-

ceedings to which he has not consented and of which he has had no notice. And the action of the secretary of state was not judicial. It was purely ministerial. Judicial powers cannot be conferred on State officers under the present constitution of Michigan, which expressly forbids it.

3. If no clause was ever put in the leases of Harvey, Reynolds and the Manganese, in reference to this 99 year lease, it would now be effectually barred by the statute of limitations. It is barred as to those owners like Boyer, Gaffney, Gendreau, etc., etc., who have never recognized its existence. I am also clear that the Pioneer never can enter and appropriate the discovery of another. They cannot stand by until others have discovered a valuable deposit of ore and then commence mining a portion of it. This was the advice I gave A. A. Anderson about the South Buffalo in 1887. I told him to stake out the entire 40 as a discovery.

614 4. For the foregoing reasons I insisted that the 99 year clause should be stricken out of the Manganese leases.

5. Also there is another point: That 99 year lease only applies to *only* one-half the ore even if it is valid. It does not apply to the reservation of James L. Reynolds either in the Arctic or Negaunee Iron Company lands. Reynolds and Harvey being equal tenants in common of the minerals. Harvey attempted to create a new tenancy in addition to his own in one-half of the joint interest of himself and Reynolds. Harvey at that time owned all the surface and half the mineral, while Reynolds owned the other half of the mineral. Now Harvey had the undoubted right to sell or lease his entire interest, or any portion of it, such as an eighth, a quarter, a half or the like, of his *entire* interest, but he could not lease or sell a portion of the surface and reserve the mineral and *vice versa*.

This is a purely legal question, but was passed on by the supreme court of Massachusetts. Hayden raised the same point in favor of Rees against the Arctic in the suit about the Blue, but the facts did not fit his law, and besides Rees had previously recognized the validity of the Arctic's title by joining in an option and lease to third parties. This point is a technical one, but courts will give effect to technical defenses where the claim of the plaintiff is unconscionable.

The Pioneer never paid one dollar for that lease. At the time it was made Harvey controlled the Pioneer. He really made a lease to himself. No attempt has ever been made to work under it and now, after the lapse of thirty-three years, courts would be against it and would defeat it if they could. As I have already said, it would not have the slightest vitality only for the unfortunate references to it in the leases executed by the Manganese and others in times past and I think such references can now be dropped with safety. Hence, I advise that no reference be hereafter made to the 99 year lease. I make none in the Arctic leases, where we join with Boyer, Gaffney, etc.

I also call attention as to what is the necessity of making any

further reference to the leases from Harvey to Breitung in 1870 and 1871. If those leases are still in force, it is all right, but if they have expired, why lumber up new leases with referring to them? But this is only a suggestion, as I could not give an opinion on those leases without examining them.

615 I expect to start for England, January 17, with my family, to be absent until April or May, my family to remain in France indefinitely, and I expect to leave here the latter part of this month.

Yours truly,

W. P. HEALY.

I wrote to Schlesinger last month that I am going abroad and wanted the royalty the beginning of December. I received his monthly reports yesterday and he says he will settle within a few days; if not, I will write him again.

W. P. H.

At an adjourned hearing of said cause, held June 17, 1901, S. W. SHAULL, sworn on the part of complainants, testified as follows:

Mr. ELDREDGE:

Q. Mr. Shaull, there was introduced in evidence a copy of an opinion written by W. P. Healy, marked Complainant's Exhibit L 2. Has search been made for the original of that?

A. I will say that the original of that paper was supposed to be in the office and in the safe of N. M. Kaufman of this city; that Mr. Kaufman and myself have, since the testimony was taken in this case, made a thorough search of the safe and vault for that paper where it was supposed to be, and we are unable to find it after a thorough search. I will state further that neither Mr. Kaufman nor Mr. Breitung know of any other place where it will be likely to be found, and both are unable to designate any other receptacle where it could be found.

Mr. HOYT: I move that that answer of the witness be stricken out as incompetent and irrelevant.

S. W. SHAULL, recalled on the part of the complainants, further testified, as follows:

616 Direct examination by Mr. ELDREDGE:

I heard Mr. Hayden's testimony as to what took place at the time I served him with a notice of taking the deposition in Chicago of N. M. Kaufman. In the afternoon of March 7, 1901, at the city of Lansing, about seven o'clock in the evening, just about dark, I took the notice in question and ascertained where Mr. Hayden's room was at the Downey house, in Lansing, and went to his room. I knocked on the door, and he said "Come in," and I walked in, and

Mr. Hayden stood by a table, or sat by a table, that stood in the center of the room, with a package of papers partially open upon the table. He had just returned from the attorney general's office, where we had been making an argument. I am not certain whether we had just returned from there or not; but at all events he stood by the table, with a package of papers opened partially before him. And the dresser stood over by the side of the wall. The electric lights were turned on—incandescent lights—light in the room. I said to him substantially, "Mr. Hayden, there is a notice I wish to leave with you." And he looked up and said "All right," about that way. And I laid it down on the dresser by the side of him, and he looked at me when I laid it down. I walked out of his room and that was all that was said about it. And I never heard any more of it until after the deposition was taken, and then the notary told me he had received a letter from Mr. Hayden, which Mr. Hayden now produces in court; and that was the first intimation I had——

COURT:

Q. That letter was attached to the deposition?

A. I had the notary attach it. I thought it ought to be attached and returned with the deposition, inasmuch as it was there; and he did attach it, and it was returned.

Mr. Hayden did not say anything to me with reference to
617 his inability to be present at Chicago, or with reference to the impropriety of my serving the notice at that time or place. I have given all the conversation that took place between me and Mr. Hayden, I believe.

Cross-examination by Mr. HOYT:

I say it was at my suggestion that Mr. Hayden's letter was attached to the deposition. The notary called my attention to the letter after the testimony was taken, and said he had received it. At that time I didn't know when he had received it, and I suggested that it ought to be attached to the deposition in some way and brought here in court.

I wouldn't say that it was only on account of my suggestion that the letter should be attached that it was attached to the deposition. The notary might have done his duty, anyway. He asked me about it, and that is what I said to him. I considered it his duty to do it.

Q. You say you simply came in, knowing that Mr. Hayden was busy there, and dropped the notice?

A. I didn't know how busy he was.

I saw him there. He stood at the table, and there was a lot of papers there, with a newspaper around them.

Q. You knew he was engaged in the matter before the attorney general?

A. He had been before that.

Q. You knew also you were all there trying to defeat certain legislation of the State of Michigan, didn't you?

A. I knew that Mr. Hayden had caused a bill to be introduced, and it was then before the judiciary committee upon which we had just had a hearing. We were there opposing the bill because the object of the bill was to make valid the reorganization of the Pioneer Iron Co.

Q. Money was spent in relation to that bill, was it not?

618 A. Not that I know of. I will swear that I don't know that it was. I never heard of its being spent.

Mr. PENNINGTON: You paid your hotel bills?

A. Certainly. When I say spent, improperly spent—if that is what you mean—I don't know of any such thing.

I had some conversation with members of the judiciary committee. I had some conversation with my clients. Mr. Kaufman was there and Mr. Mather and Mr. Hayden, and Mr. Tim Nester was there acting for them, and Mr. McMillan of Detroit was there; and Stanley W. Turner was there. There was a lot of people there acting for you (Mr. Hoyt).

On the 7th of March I went to Mr. Hayden's room and laid that notice down. The day of the week was Thursday, I believe. I laid that notice down.

Q. And went out without saying a word about what the notice was, did you?

A. I simply called his attention to it, as I say.

Q. Did you tell him it was a notice to take testimony?

A. No; I said, "Mr. Hayden, here is a notice I wish to leave with you."

Q. You didn't tell him what it was?

A. Simply a notice.

Q. You swear that you had no conversation with Mr. Hayden on the subject?

A. I don't say anything of that kind. Just the conversation I have said, "Here is a notice."

Q. You swear that you had no conversation with Mr. Hayden on the subject of that notice, in which Mr. Hayden protested against the serving of that notice?

A. Not a single syllable, Mr. Hoyt.

Q. You swear to that?

A. Yes, sir, most emphatically I do.

Judge BROWN: I have a deed to offer in evidence, to

619 stand as No. 63½, in the order in which I offered the documents; the Pioneer Iron Co. by the U.S. marshal to Michael Gaffney, dated Sept. 27, 1880, recorded Feb. 22, 1881, in Liber V of Deeds, at page 87.

Said deed was made upon an execution sale against the Pioneer Iron Company of lands described as commencing at a point twelve

hundred feet (1200 ft.) east of the center post of section six, town 47 north of range 26 west; thence south 1492 feet; thence north eight degrees west 172 feet; thence north 1470 feet; thence 196 feet to the place of beginning, conveying lot three (3) of the so-called Harvey lands, appearing on Complainants' Exhibit V.

Mr. HOYT: We object to it as incompetent and irrelevant.

The depositions of Edwin R. Perkins, George A. Garretson, Jeptha H. Wade, Frank B. White, Edwin V. Hale and C. C. McMahon of the city of Cleveland, in the State of Ohio, taken on behalf of the complainants in this cause on the 11th day of December, 1900, at ten o'clock a. m. at the city of Cleveland, in the State aforesaid, are as follows:

EDWIN R. PERKINS, sworn, testified as follows:

Direct examination by Mr. SHAULL:

My name is Edwin R. Perkins, age 67, residence, Wickliffe, Ohio; occupation, banker. I have been connected with the Iron Cliffs Co. as a director and also a stockholder. I was a stockholder about ten year ago. I cannot tell just when. I am still a stockholder. I became a director of that company at that time whenever it was. I am acquainted with J. H. Wade, Jr., and William G. Mather.

I am a stockholder of the Cleveland Iron Mining Co. I
620 became such stockholder 13 or 15 years ago, I should think. I am not an officer of that company, and have never been one. I remember several gentlemen, of whom I was one, made a purchase of a large amount of stock of the Iron Cliffs Co. I could not state the date or the amount. My recollection is that the gentlemen were Mr. J. H. Wade (I am not quite certain whether at that time it was himself or his grandfather, and it might have been both, but his grandfather certainly was one), and Mr. Selah Chamberlain, Mr. Samuel Mather and myself.

Mr. KELLY: Counsel for defendants desires to enter an objection to this question and this line of cross-examination, on the ground that it is incompetent and irrelevant.

At that time I issued to the stockholders of the Iron Cliffs Co. a circular, a copy of which you show me.

Counsel for defendants thereupon objected to the testimony as incompetent and irrelevant, and a further objection to any answer that may be made by the witness unless he can answer of his own personal knowledge.

Witness continues:

This power of attorney I don't recall.

The paper testified to is received in evidence and marked Complainants' Exhibit A and is as follows:

CLEVELAND, O., *May* 4, 1891.

To the stockholders of the Iron Cliffs Company.

(Newspaper clipping as follows:)

GENTLEMEN: In February, 1890, a syndicate of Cleveland gentlemen, represented by the undersigned, as trustees, purchased 14,005 shares of the capital stock of the Iron Cliffs Company, being a controlling interest therein; such purchasers also owning a controlling interest in the stock of the Cleveland Iron Mining Company. Deeming it for the mutual advantage of the two companies that a
621 combination should be effected, and not wishing to bring about a consolidation, by which valuable privileges now possessed by the companies would be lost, the syndicate whom we represent has perfected a plan for the organization of a new company, under the laws of the State of West Virginia, to be known as the Cleveland Cliffs Iron Company, with a capital stock of $5,000,000, divided into 50,000 shares, of the par value of $100 each, which stock will be exchanged at par, for the stock of the Iron Cliffs Company, on the basis of $125 per share for the latter stock, and for the stock of the Cleveland Iron Mining Company on a basis of $20 per share for that stock, making a total valuation of $2,500,000 for the stock of the Iron Cliffs Company, and of $2,000,000 for the stock of the Cleveland Iron Mining Company, thus leaving $500,000 of the new company's stock in its treasury, for future use, and to furnish it with an additional working capital for the acquisition of new properties and for the carrying on of profitable enterprises. (End of clipping.)

In addition to the above advantages, the new company will have much more liberal corporate powers, and greater facilities than are now possessed by either of the constituent companies, and it is therefore expected that its stock can be made more valuable and profitable than that of either of the other companies, under their present organization, and that from its cash receipts, obtained from dividends on the stock of the constituent companies, and from its other earnings and resources, a surplus can be accumulated, which will enable it to pay a regular quarterly dividend on its stock, thus giving it a stable value in the market, independent of any temporary depression in the iron trade.

Those owning a large majority of the stock of the Cleveland Iron Mining Company have already agreed to exchange, and we earnestly desire that not only the stock represented by us, but the outstanding stock of the Iron Cliffs Company, shall share in the advantages of this plan, and in order that all may avail themselves of this
622 opportunity we are authorized to hold this offer open for your acceptance until the 25th day of May, A. D. 1891, after which time the offer to make the exchange on the above terms will be withdrawn.

E. R. PERKINS,
J. H. WADE, JR.,
WM. G. MATHER, *Trustees.*

Know all men by these presents, that in consideration of one dollar ($1.00,) and other valuable considerations, received to — full satisfaction of E. R. Perkins, Wm. G. Mather and J. H. Wade, Jr., trustees, — have hereby sold, assigned, transferred and set over to and unto the said trustees, — shares of the capital stock of the Iron Cliffs Company, and the certificates representing the same, to be sold and delivered by them to the Cleveland Cliffs Iron Company, a corporation organized under the laws of West Virginia, in exchange for — full paid and non-assessable shares of the capital stock of said last named company, of the par value of $100.00 each, and which — agree to accept in full consideration for said sale and transfer, hereby forever relinquishing all — right, title and interest in and to the stock of the Iron Cliffs Company so transferred, and hereby agreeing to accept said shares of the capital stock of the new company, when delivered to — as a full consideration therefor; this transfer being made in accordance with the terms of a circular of said trustees, dated May 4th, 1891.

Witness — hand and seal, this — day of May, A. D. 1891.

——— ———. [SEAL.]

Signed, sealed and delivered in presence of

——— ———.

——— ———.

Counsel for defendants objected to the introduction of this paper as incompetent and irrelevant, and also objected to it as not
623 the best evidence, as it does not purport to be the original document.

The witness continues:

I should qualify that answer by saying that is the substance of it. I would not say that that (Exhibit A) is an exact copy of it. I don't remember sufficient of it.

Counsel for defendants thereupon renewed his objection on the same grounds as above, in the light of the further statement of the witness that he does not know whether it is a correct copy or not.

The witness continues:

I think Exhibit A is a substantially correct copy of a circular I sent.

Q. In this circular to which I have called your attention, and which is marked Complainants' Exhibit A, I ask you what you referred to by the use of this language, viz.:

"A syndicate of Cleveland gentlemen, represented by the undersigned as trustees, purchased 14,005 shares of the capital stock of the Iron Cliffs Company, being the controlling interest therein; such purchasers also owning a controlling interest in the stock of the Cleveland Iron Mining Company. Deeming it for the mutual advantage of the two companies that a combination should be effected, and not wishing to bring about a consolidation, by which

"valuable privileges now possessed by the companies would be "lost—" What did you mean by valuable privileges, if you know?

Counsel for the defendants objected to the question, first because it is incompetent and irrelevant; second, because it calls for the construction of a written document by the witness, whereas the document if it had been introduced would speak for itself.

A. I cannot undertake to go over that at this stage. I cannot tell you what was referred to because my memory about it is not at all strong or sharp. Whatever we did, or failed
624 to do, was at the suggestion of counsel and acting under their advices, and I could not undertake to make any interpretation whatever on that point. My recollection I will say, further, is exceedingly dim on the subject.

Q. To refresh your recollection, witness, was not a circular of which I now hand you a copy, enclosed in the same letter and sent out with it to the stockholders of the Iron Cliffs Company?

Counsel for defendants objected to this question as incompetent and irrevelant, and because it calls for the production of a copy, which is not the best evidence.

A. About this circular, I know nothing, or I remember nothing.

Q. Did you not, as a stockholder of the Iron Cliffs Co., receive a circular signed by the president and secretary of that company, the president being William G. Mather and the secretary James H. Hoyt, dated Cleveland, Ohio, February 19, 1891, of which the circular shown to you is a copy?

Objected to by defendants on the same grounds above stated, and on the further ground that it is an attempt to cross-examine the witness upon a subject which he has already said he has no memory.

A. I don't know whether it was sent or not.

Q. In the circular spoken of, which you have just examined, this language occurs: "The Iron Cliffs Co. has a valuable privilege, "which would necessarily be wiped out by the consolidation. By "special legislation procured to be passed by Mr. Tilden, the Iron "Cliffs Co. now possesses the peculiar right of owning stock in sub- "companies; under this special legislation it owns the stock of the "Excelsior and the Pioneer Companies. This right on consolida- "tion, would necessarily be taken away, as the new corporation "could only exercise and be possessed of the privilege allowed to a "corporation newly formed under the Michigan statutes." Isn't that the special privileges referred to in the circular marked Complainants' Exhibit A?

625 Counsel for defendants objected to this question, on the ground that it is incompetent and irrelevant, because it is an attempt at cross-examination of the witness upon a subject of which he has said he does not remember anything about, and because it is

an attempt to secure from the witness a construction of a written instrument which speaks for itself.

A. They may have been.

I do not know of any other special privileges which the Iron Cliffs Co. had. I have already stated that I have not a memory upon any of the details connected with any of these transactions; they are all past and I have large business occupying my constant time; a transaction comes up and vanishes, goes away; I could not undertake to make interpretations of this.

Q. Do you know of any other special privileges which they owned at that time?

Objected to by counsel for defendants on the above grounds and also on the further ground that the word "other" assumes that the witness knows that they had these privileges.

A. I don't know of any special privileges.

Q. Do you not know as a matter of fact, that they did own the stock of the Pioneer Iron Company—the capital stock of the Pioneer Iron Company and of the Excelsior Iron Company?

Objected to on the same ground.

A. My impression is that the Iron Cliffs Co. had such ownership then and now.

I don't remember that I have ever seen the stock books of the Iron Cliffs Co. I have never seen the stock record books of the Pioneer Iron Company so called. I never had anything to do with the books of either those concerns, and have never kept any track of the business of the Pioneer Iron Company in its earlier days; but I have noticed from time to time balances in the bank I am connected with standing to the credit of that company. I think there is now at this time. I remember of such balances for
626 several years back probably. I cannot tell you how many years. That is the bank which I am connected with here in Cleveland.

I do not know where the books of the Iron Cliffs Co. or the Pioneer Iron Co. are, nor where the office of the Pioneer Iron Co. is.

Cross-examination by Mr. KELLEY:

I have never seen the stock books of the Pioneer Iron Co. nor any book in which it appears that the Iron Cliffs Co. owns the stock of the Pioneer Iron Co. I have not derived my impression from any records of the company.

Objected to by complainants as assuming something not appearing from the evidence.

Q. Do you know of any other means from which you could have derived that impression, except from hearsay?

A. Well, there are some things I would not call hearsay; if peo-

ple associated with me were stating the facts, I would not call that hearsay, though I had not personal knowledge of it.

Q. Then what you do know is what you have heard people say?

Mr. SHAULL: Those associated with him in the enterprise.

Q. Well, I will make it broader than that; any one say.

A. I don't think, Mr. Kelley, I could say any more in regard to that.

Re-direct examination by Mr. SHAULL:

I mean people who were associated with me in the business of the Iron Cliffs Co.

Objected to by defendants.

GEORGE A. GARRETSON, sworn on the part of the complainants, testified as follows:

Direct examination by Mr. SHAULL:

My name is George A. Garretson, age 56 years, residence Cleveland, Ohio. Principal occupation, president of the Bank of Commerce. I am acquainted with William G. Mather of Cleveland, Ohio. I am president of the Pioneer Iron Co., have been since sometime last spring. I have forgotten the dates. I think it was prior to the first of last May. I think Mr. James H. Hoyt was the man who spoke to me about my being elected president of that corporation.

627

Objected to as improper, irrelevant and incompetent.

I had no connection with that company prior to that time. I was a stockholder at the time I was requested to serve as its president. I was a stockholder for a month or six weeks before that time. I cannot tell. I owned 50 shares of stock when I became a stockholder.

Objected to as irrelevant and incompetent.

I don't know from whom I purchased it. I purchased it in Cleveland. I paid my own money for it to one of the messengers, or one of the employés of the American Trust Company, I believe. I don't recollect who it was.

I was advised to buy this stock by a friend of mine.

Objected to as irrelevant and incompetent.

I think it was Mr. Hoyt who advised me to purchase it.

Same objection.

I am certain that it was Mr. Hoyt.

Objected to as irrelevant.

I was not a stockholder of the Iron Cliffs Company at any time. I held 12 shares of stock in one of those companies. I have forgotten which, only 12 shares for a short time. I sold them. I purchased the 50 shares of stock because I was told it was a good investment, and I was asked to purchase it.

Objected to as incompetent and irrelevant, and inquiring into the witness' private business, which has nothing to do with this case.

There was no reason given to me why I should purchase it, except it was a good investment. I don't know that Mr. Hoyt had in view the possibility of my becoming an officer and qualifying myself as such by purchasing this stock.

628 Objected to as incompetent and irrelevant, calling for the witness' conclusion as to what was in another man's mind, which he cannot testify about. He said nothing to me at all about qualifying as an officer.

The first time he talked to me about that was when he asked me if I would serve as president if elected. It must have been a month or six weeks after I became a stockholder. I bought these shares outright and paid for them. I do not hold them in trust for anybody now. I received a certificate of those shares of stock. That certificate I received from the messenger to whom I paid the money. That certificate was issued in my name. I have never seen the books. There was no indorsement upon the back of it, except the regular certificate of transfer in blank.

I don't remember the date of the issuing of that certificate. The certificate shows the date of its issue.

I presume as president of the company I would have access to the books of the Pioneer Iron Co. I don't know where those books are. I never have known where they were. I have never taken any active interest whatever in the management of the affairs of the Pioneer Iron Co. I don't know who the secretary of the Pioneer Iron Co. is. I think it is Mr. E. V. Hale, but I am not sure. I have never taken any active part at all in any way in that corporation.

I am president of the Bank of Commerce. I understood Mr. Mather and his associates were stockholders in the Pioneer Iron Co.

Objected to as incompetent and irrelevant.

I didn't know how much stock they held. I purchased the stock because I was asked to purchase it, and I asked no question about it.

Objected to as incompetent and irrelevant.

I was not asked by somebody with whom I was in close business relations.

All the investigation I made as to the standing of the Pioneer Iron Co., its property, indebtedness, or anything of that sort
629 before I made this purchase, was what I asked Mr. Hoyt about it. I asked him the condition of the company.

Objected to as improper, irrelevant and incompetent.

The Iron Cliffs Co. has an account with our bank. I do not think Mr. Wm. G. Mather, or some of his other interests, have an account with us.

Objected to as incompetent, irrelevant and leading.

Q. If you have access to the books of the Pioneer Iron Company as you say, will you produce those books in court here?
A. I would have to if I could get them, I suppose.
Q. Will you make an effort to get them and produce them here?
A. I won't unless I am required to.
Q. Why?
A. None of my business.
I was subpœnaed in this case. I don't know where the books of the Pioneer Iron Company are. The subpœna required the production of the books.

Objected to as incompetent, as the subpœna shows for itself.

I have not any knowledge of where the books are. I have not made any attempt to produce them.
I said my position as president I presume would allow me access to the books. That is what I mean. I never had access to the books; never have seen them. I don't know that I could produce them if I tried. My answer was misleading. I didn't mean that I could go and get them, because I don't know where they are and I cannot get them. I haven't access to them. It would be an impossibility for me to get the books. I haven't any idea where they are. I will not direct the custodian of those books to produce them here in court. I will not take any active measures to prevent their production. I have no objection to their being produced at all. I have no objection to saying to the custodian that he can pro-
630 duce them if he sees fit. I will say that to him. I don't know who the custodian is. I have no objection to saying that to him.

Cross-examination by Mr. KELLEY:

I purchased the 50 shares of this stock and paid the money to somebody from the American Trust Company. I have no objections to stating how much I paid for the stock per share. I paid $31.00 a share. The purchase of that stock was a *bona fide* purchase. I bought it for myself.

JEPTHA H. WADE, sworn on the part of the complainants, testified as follows:

Direct examination by Mr. SHAULL:

My name is Jeptha H. Wade, age 43, residence New York. One of my principal occupations is real estate, and handling investments. I was a stockholder of the Iron Cliffs Co. some time prior to 1891. I believe I have a little stock now, having been a stockholder continuously. I am acquainted with Geo. A. Garretson, the witness who preceded me on the stand. I have known him probably 30 years. I think I must be the J. H. Wade, Jr., spoken of in Complainants' Exhibit A, by Mr. Perkins while he was upon the witness stand. I have no personal recollection of Complainants' Exhibit A, which you show me. I remember the transaction to which it relates at the time. I remember this transaction in a general way. I don't remember the details.

Defendants make the same objections to this testimony that were made to the introduction of the paper in the questions asked Mr. Perkins in regard to the same.

I remember in a general way that substantially that kind of transaction was pending.

Objected to by defendants as involving testimony by the witness as to the contents of a printed paper, which is the best evidence, and also that the evidence is incompetent and immaterial.

631 That transaction was the purchase of the Iron Cliffs stock.

Defendants make the same objection as before.

The transaction we are referring to was the purchase of the controlling interest of the Iron Cliffs stock. I believe it was to be effected substantially in the manner set forth in the circular, of which I hold a copy.

Defendants enter the same objection as before.

I don't remember what the special privileges were referred to in the circular marked Complainants' Exhibit A.

Defendants make the same objection as before.

I have no personal recollection of the circular being issued in connection with the one, a copy of which I hold in my hand by William G. Mather and James H. Hoyt, under date of Cleveland, Ohio, Feb. 19, 1891.

Same objection by the defendants.

If my name is on the circular, marked Complainants' Exhibit A, I must have signed it. I did not prepare it. I am quite sure of that.

Same objection by defendants.

Also that the original paper would be the best evidence.

Q. In this circular you say: "Deeming it for the mutual advantage of the two companies that a combination should be effected and not wishing to bring about a consolidation by which valuable privileges now possessed by the companies would be lost, the syndicate whom we represent has perfected a plan for the organization of a new company under the laws of the State of West Virginia, to be known as the Cleveland Cliffs Iron Company." Do you know what those valuable privileges were, referred to in this circular?

A. I don't know the legal reasons for that. It is a long time ago. I don't recall what the valuable privileges were that were referred to.

Q. Let me refresh your recollection from the circular signed by William G. Mather and James H. Hoyt, of date, Cleveland,
632 Ohio, February 19, 1891, as follows: "The Iron Cliffs Com-
"pany has a valuable privilege which would necessarily be
"wiped out by the consolidation. By special legislation procured to
"be passed by Mr. Tilden, the Iron Cliffs Company now possesses
"the peculiar right of owning stock in sub-companies; under this
"special legislation it owns the stock of the Excelsior and the Pio-
"neer Companies. This right, on consolidation, would necessarily
"be taken away, as the new corporation could only exercise and be
"possessed of the privileges allowed to a corporation newly formed
"under the Michigan statutes." I will ask you whether, upon having your recollection refreshed by that, you can now say whether or not these are the special privileges referred to in the circular signed by you?

Objected to by defendants, first because it is incompetent and irrelevant. Second, because it is misleading. Third, because it calls for the construction of a written document by the witness. And fourth, because the witness has already stated that he does not remember anything about what the special privileges were; and it is therefore cross-examination.

A. From your reading of that, I presume that they were, although I do not remember positively.

Mr. KELLEY: I give notice of a motion to strike out the answer as incompetent.

I have been connected with the Iron Cliffs Company as a director. I have no recollection of receiving as a stockholder of the Iron Cliffs Company a circular signed by William G. Mather and James H. Hoyt, dated Cleveland, Ohio, February 19, 1891, a copy of which you show me. It is so long ago that I don't remember whether I received it or not.

I am still a director of the Iron Cliffs Company. I presume I was first elected such director soon after I made the original purchase of the stock. As near as I can tell that was 10 or 12 years ago. I was a director of the Pioneer Iron Company at one time. I

don't know what years they were. I think I was a director
633 up to a year or two ago. I don't know whether I was a director from the beginning or not. I don't remember of the attempted re-organization of that concern. I cannot recall now any directors' meeting that I attended. I did not have access to those books. I never examined its books at all. I never saw those books. I did not know anything about how the stock of that concern was held by the Iron Cliffs Company. I never saw the stock list of the Pioneer Iron Company. I didn't know it as a fact from my association with the other members. I had an impression that they had an interest in some way. How that interest was held I don't know, nor what it was I don't know.

Objected to by the defendants as incompetent and irrelevant.

I did not take very close note of those things. I was a very small stockholder.

I could not answer whether or not the Pioneer Iron Company had any meetings at all while I was a director, that is, of the directors. I spent very little time in Cleveland.

Cross-examination by Mr. KELLEY:

Q. In answer to one question which was asked you in chief you stated, "I must have signed that circular marked Exhibit A if my name is there." You mean to say that merely because your name happens to be printed on a piece of paper that you have shown to you that you want to say that you must have signed the original document?

A. I have no right to say that. I assume I did from my name being there. I have no personal recollection of it.

I have no personal recollection of that being a correct copy of any document which I may have had to do with. I have no recollection whatever of the circular that was shown to me by counsel on direct examination at the bottom of which appears printed the names of William G. Mather and James H. Hoyt. I have no personal recollection as to what the special privileges were referred to in that circular.

634 Redirect examination by Mr. SHAULL:

Q. You do remember, however, do you, Mr. Wade, that substantially the transaction set forth in that circular was carried out by you and others at that time?

Mr. KELLEY: What circular?

Q. Marked Complainant's Exhibit A, the one to which your name is signed?

A. Yes.

Q. You don't wish to qualify that answer by what you said on cross-examination, do you?

Objected to by defendants as leading and improper.

A. I have only answered in one way. What do you mean?
Q. But you wish to leave that answer that you made on direct examination stand as still your answer?
A. Yes, sir.

FRANK B. WHITE, sworn on the part of the complainants, testified as follows:

Direct examination by Mr. SHAULL:

My name is Frank B. White, residence Cleveland, Ohio; age 46; occupation, accountant. I am employed by the Cleveland Cliffs Iron Co. in their office in the city of Cleveland. I have been so employed about ten years. I am general accountant, bookkeeper, and have the charge of all the general books. Robert C. Mann is the auditor of the Cleveland Cliffs Iron Co.

I have been subpœnaed in this case. The paper you show me is the original of a subpœna, a copy of which has been personally served upon me, by the officer whose name appears indorsed upon the outside thereof. That was served upon me Friday last, that would be the 7th.

Complainants' counsel thereupon offered this paper in evidence.
Paper received in evidence and marked Complainants' Exhibit B.

635 Exhibit B is a subpœna, in due form, addressed to William G. Mather, George A. Garretson, Edwin V. Hale, Robert C. Mann, James H. Hoyt, Frank B. White, Christopher C. McMahon, Edwin R. Perkins, and J. H. Wade, Jr., commanding them to appear before A. W. Barbour, a notary public within and for the county of Cuyahoga, State of Ohio, in the city of Cleveland, Ohio, on the 11th day of December, A. D. 1900, at ten o'clock in the forenoon, and to produce there all the books of the Iron Cliffs Company and of the Pioneer Iron Company in their custody as officers, agents or otherwise, which contain the proceedings of the meetings of the stockholders and directors of said companies, or either of them, including the stock books, transfer books, and account books of said companies, from April 2, 1857, to the present time, and then and there to give evidence in this cause. Said subpœna has indorsed thereon the return in due form, showing service upon George A. Garretson, Edwin C. Hale, James H. Hoyt, Frank B. White, Christopher McMahon, Edwin R. Perkins. William G. Mather and J. H. Wade, Jr., not found.

Said paper objected to by defendants, as the witness is here.

I have not brought any of the books of the Cleveland Cliffs Co. or the Pioneer Iron Co. None of them are in my control. I keep a set of books of the Pioneer Iron Co. They are in the office of the

Cleveland Cliffs Iron Co. The books of the Cleveland Cliffs Iron Co. are in the office of that company. I have access to those books daily to make ordinary entries. No one restrains the use I make of those books, so long as they are in the office. I have made no attempt to bring those books to this court, because I have no authority to do any such thing. I didn't ask anybody if I might bring them. I did not ask the president or the secretary or the auditor of the Cleveland Cliffs Iron Co. if I might be permitted in pursuance of the mandate of the subpœna to bring those books to this court to-day, because neither of the officers are in the city. They have not been in the city since I was served. The president has not been in the city for nearly five weeks now.

636 Q. Who besides you has had the custody of those books during those five weeks?

Objected to on the ground that this witness has said he has not the custody of them.

A. No one.

I did not bring those books into court because I have no authority to remove them from the office. I have not taken legal advice as to whether I have any right to bring those books into this court. I didn't have the right to bring them in because I have an understanding the books are there for me to make certain entries on them every day as the business comes up.

No one has told me that I should not bring those books into this court to-day, nor advised me not to do it. I didn't do it simply because there was no officer of the company there to whom I could refer as to what I should do in the matter. I decline to bring the books into court until I get instructions from the president of the company. I have made no effort to get such instructions because I don't know where he is. I have made efforts to find out where he is. I asked those in the office if they knew where he was and they told me they didn't. I made this inquiry last Saturday. I guess I inquired of the cashier, asked him if he knew where Mr. Mather was, and he said no. There is no one else there to ask.

Q. Was there not somebody in Cleveland who knew where he was, to your knowledge?

Mr. KELLEY: Objected to as being cross-examination.

A. I presume there was; I presume possibly his own people might have known. I didn't take the trouble to go there.

He lives in Cleveland, and I know where he lives.

Q. And you could have reached him by 'phone, or his people, at any time, could you not?

A. Yes, sir, I presume I could.

Objected to as leading and improper.

637 We have just general books of the Pioneer Iron Company in the Cleveland Cliffs Company offices here, ledger, journal and cash book.

Q. Where is the transfer book of the Pioneer Iron Co.?

Same objection as last.

A. I don't know, I have never seen it.

The cash book of the Iron Cliffs Company is in the office of the Cleveland Cliffs Company. (Same objection.) I have not all the old general account books of the Iron Cliffs Company, (Same objection.) I have the general account books of the Iron Cliffs Company for ten years back. (Same objection.) I don't know where the books of the Iron Cliffs Company prior to 10 years ago are. (Same objection.)

Q. Are all of the books of the Iron Cliffs Company in the office since you went with the company?

Same objection.

A. No, I could not answer that question, because I really don't remember that they are all there.

I haven't made a search to ascertain how many of the old books are in the office, and how far back they go?

Same objection.

I don't know that. (Same objection.) The Pioneer books that I now have in my office go back less than a year. (Same objection.) I don't know where the Pioneer books before that time are. (Same objection.) I don't know of any Pioneer books kept before that time. (Same objection.)

Aside from the Iron Cliffs Company books and the Pioneer Iron Company books, I keep the books of ten different companies.

Objected to as irrelevant and incompetent.

I keep all the books that are kept in that office.

Objected to on the same ground.

Counsel for complainants thereupon offered in evidence Complainants' Exhibit B, as a part of this deposition. Said Exhibit B is hereto attached and made a part hereof.

Objected to by defendants as not being a proper part of the deposition, and as being incompetent and irrelevant.

638 The copy of said Complainants' Exhibit B served upon the witness was thereupon offered in evidence and marked Complainants' Exhibit C.

I am not at all familiar with the old Iron Cliffs books which they had prior to the time I went with the Mather people.

Objected to as incompetent.

I know nothing about what they contained prior to that time. I never made any search for the old books of the Pioneer Iron Co. in the offices of the Iron Cliffs Co. since this subpœna was served upon me, because I thought it was simply useless. The books were never

in that office to my knowledge. (Same objection.) I have not the slightest idea where the books are. (Same objection.) And have never heard where they are. No one has ever said anything about where they are. (Same objection.) I have not made any search for the old books of the Iron Cliffs Co. since this subpœna was served. (Same objection.) I do not know where they are. (Same objection.) I have never heard anybody speak of them. (Same objection).

Cross-examination by Mr. KELLEY:

As far as I know there may have been other account books of the Pioneer Iron Co. prior to the ones I speak of as having been kept by myself.

Re-direct examination by Mr. SHAULL:

The Pioneer Iron Co. never had any offices in the city of Cleveland aside from the offices which it now has that I ever heard of. I should have known it, presumably, if they had. I know of no other set of books kept at any other place.

Q. And you are entirely familiar with that corporation's business that you are keeping the books of, are you not?

Objected to as leading and improper.

A. I am familiar with it. as far as my duties are concerned.

639 EDWIN V. HALE, sworn on the part of complainants, testified as follows:

Direct examination by Mr. SHAULL:

My name is Edwin V. Hale, age 31 years, residence Cleveland. I am treasurer of the American Trust Company. I am secretary of the Pioneer Iron Company. I don't remember the exact date of my election, some time last spring, about April. The circumstances under which I became secretary were, I understood I was to be elected, and I was not present at the meeting when I was elected secretary. I was a stockholder. I became a stockholder a short time before that. I don't remember the exact date. I think I held 951 shares of stock. I acquired this stock 30 days previous to the election, I think.

Objected to as irrelevant and incompetent.

I bought the stock and paid for it.

Am I required to state the different circumstances and conditions leading up to why I acquired that stock?

Mr. KELLEY: I will advise you as your personal counsel and not as counsel in this case, that you are not obliged to state any of your

private business in connection with why you acquired certain stocks.

Q. Is Mr. Kelley your personal counsel?

A. Yes, sir.

Q. Has he counseled you with relation to the testimony you should give in this case?

A. To a certain extent, yes, sir.

Q. What has been the nature of that counsel?

Mr. KELLEY: I object, and instruct the witness that he need not answer unless he sees fit. It is a privileged communication between client and attorney that cannot be inquired into.

640 Q. Did you retain him for the purpose of counseling you with relation to the testimony you would give in this case?

A. Yes.

Q. When?

A. Some time within the past week.

Q. Why?

Objected to as incompetent and irrelevant and as no proper part of this examination, and I instruct the witness that unless he sees fit to do so he need not answer the question. (Mr. Kelley.)

Q. Do you refuse to answer the question?

A. Yes.

Q. Did you not think you would be able to tell the truth upon this examination without taking advice?

A. I did think so.

Q. Then why did you take this advice?

Same objection.

A. I decline to answer.

Q. Did anybody suggest to you that you better employ counsel to see how much you should testify to in this case?

Same objection.

A. No.

Q. Did you make any investigation of the financial condition of the Pioneer Iron Company or its resources prior to your purchase of this stock of the company?

Objected to as incompetent, immaterial and irrelevant.

A. Must I answer that question?

Mr. KELLEY: You can do as you please. If it concerns any of your private business that you do not wish to disclose here, I will advise you *you* that it has no connection with the issues in this case and that you are not obliged to answer it. If you see fit to answer it, you may do so.

641 Mr. SHAULL: You are giving that advice as the attorney for the companies in this case and not as the attorney for the witness?

Mr. KELLEY: I am giving it as the attorney for the witness. If it concerns his personal business in such a manner that he does not care to answer it, I advise him that he is not obliged to do so; that it is not, in my judgment as an attorney, pertinent to the issues in this case. If you desire to answer that question you may do so.

A. I do not desire to answer.

Q. You refuse to answer, do you?

A. Yes.

Q. And upon what ground do you refuse to answer?

Objected to.

A. Am I obliged to answer that question?

Mr. KELLEY: You may answer that, if you want to; it is your own personal, private business, I suppose.

Mr. SHAULL: I take exception to the education of the witness in the court room.

A. What question do you mean?

Q. Did you make any investigation of the financial condition of the Pioneer Iron Company or its resources, prior to your purchase of this stock of the company? That you refused to answer. Now I ask, why do you refuse? What are your reasons for your refusal?

A. Because it seems to me that it is my own personal matter.

Q. At whose solicitation did you purchase the stock of the Pioneer Iron Company in question?

Objected to as incompetent and irrelevant.

A. That seems also to be a matter of my own personal affair, so I decline to answer that.

Q. Do you refuse to answer the question?

A. Yes.

642 Q. Why?

A. Because it is a matter of my own personal affairs.

Mr. SHAULL: I now ask the officer to direct the witness to answer the questions which he has refused to answer on the record, so that it will appear by the officer.

The NOTARY: Mr. Hale, by virtue of my authority as notary public in this matter, I direct you to answer the question: How did you come to acquire this stock?

WITNESS: I refuse to answer.

The NOTARY: I also direct you to answer this question: Why you retained Mr. Kelley in this matter?

WITNESS: I refuse to answer.

The NOTARY: I also direct you to answer the following questions: Did you make any investigation of the financial condition of the Pioneer Iron Company or its resources prior to your purchase of this stock of the company?

WITNESS: No, I did not.

The NOTARY: At whose solicitation did you purchase the stock of the Pioneer Iron Company in question?

Same objection as before.

WITNESS: Mr. James H. Hoyt.

I purchased the stock at the solicitation of Mr. James H. Hoyt. I purchased it 7 or 8 months ago.

Objected to as incompetent and irrelevant.

It was a very short time after Mr. Hoyt advised me to purchase the stock that I did purchase it.

Objected to as incompetent and irrelevant.

I should say not exceeding a week, anyway. James H. Hoyt, of whom I now speak, is the James H. Hoyt of Hoyt, Dustin & Kelley, who are counsel in this case. Mr. Wm. G. Mather delivered to me the certificate of stock representing this number of shares which I purchased.

Objected to as incompetent and irrelevant.

643 I think this William G. Mather is the one who was president of the Pioneer Iron Co. prior to the time Mr. Garretson became that officer. The stock was delivered to me at Mr. William G. Mather's office.

Same objection.

No one requested me to go there and get that stock. I understood that was where I could get it. I don't remember who told me that was where I could get it, but I think it was Mr. Hoyt.

Objected to as incompetent and irrelevant.

I don't think the certificate was prepared when I arrived at the office.

Objected to as incompetent and irrelevant.

It was prepared while I waited.

Objected to as incompetent and irrelevant.

I don't know who prepared it. (Same objection.) I did not receive more than one certificate as representing these shares. (Same objection.) I cannot tell exactly what is the date of my certificate, but as near as I can remember it was sometime in the month of April or March last spring. (Same objection.) I cannot say positively that it bears date on the day it was issued. (Same objection.) It was issued in my name. (Same objection.) I don't know who signed that certificate as president and secretary. I don't think I have indorsed the power of attorney that was upon that certificate. I borrowed money on that certificate, and I think I indorsed a separate power of attorney—not the one on the certificate itself. (Same

objection.) I did not borrow the money of William G. Mather, or the Pioneer Iron Co. or James H. Hoyt, or anybody connected with the Pioneer Iron Co. or the Iron Cliffs Co. I borrowed the money to buy the stock. (Same objection.)

I do not know who sold that stock that I bought. I did not understand from Mr. Hoyt that he would procure the stock for
644 me when he solicited me to buy it. I understood from him where I could buy the stock. (Same objection.) I could buy it from Mr. William G. Mather. Mr. Hoyt did not say anything to me about where I could pledge the stock for money to pay for it at that time.

Objected to as incompetent and irrelevant.

No one suggested to me that I could pledge the stock for money to pay for it. (Same objection.)

I have been subpœnaed in this cause. The subpœna you show me seems to be the original subpœna of which I was served with a copy by the officer whose name appears attached to the return upon the outside thereof. (Same objection.) I have a copy of that subpœna with me.

Mr. SHAULL: I offer the subpœna for identification and ask to have it marked Complainants' Exhibit D. I now offer Complainants' Exhibit D in evidence together with the officer's return thereon endorsed and ask to have it made a part of this deposition and return herewith.

Defendants objected to the offering of the document as incompetent and irrelevant. Said paper was thereupon marked Complainants' Exhibit D, and is as follows:

Subpœna.

STATE OF OHIO, }
Cuyahoga County, } *ss:*

To William G. Mather, George A. Garretson, Edwin V. Hale, Robert C. Mann, James H. Hoyt, Frank B. White, Christopher C. McMahon, Edwin R. Perkins, and J. H. Wade, Jr.:

You are hereby commanded to appear before me, the undersigned notary public, within and for said county, at my office therein, room 10, Wick block, 112 Public square, in the city of Cleveland, Ohio, on the 11th day of December, A. D. 1900, at ten o'clock in the
645 forenoon, and with you bring any and all the following books, as may be in your custody or under your control, to-wit:

Iron Cliffs Company Books.

1st. The books of the Iron Cliffs Company showing all official action of its directors or stockholders concerning its purchase of the

capital stock of the Pioneer Iron Company, giving number of shares, date of purchase and amount paid for same.

2nd. The books showing by whom the stock of the Pioneer Iron Company was held from 1866 to 1900, whether the same was in the name of the Iron Cliffs Company or by others in trust for it.

3rd. All account books showing the operation of the Pioneer mine from 1886 to 1889 inclusive, and by whom operated.

4th. The account books showing the operation of the Pioneer furnaces from 1866 to 1890 inclusive, and by whom the same were operated.

5th. The books showing the profit and loss account in which appears the profit or loss from the operation of the Pioneer furnaces from 1866 until it closed down, and also showing the profit or loss from the Pioneer mine operations while it was operated.

6th. The account books showing who employed and paid workmen at the Pioneer mine from 1866 to 1889, and at the furnace from 1866 to 1890.

The books of the Pioneer Iron Company, showing:

1st. A record of memorandum of its stock certificates from 1864 to 1890, issued by the Pioneer Iron Company.

2nd. The transfers of stock on the books of the Pioneer Iron Company from 1864 to 1890, and from whom and to whom the same were transferred.

646 3rd. All the account books kept by the Pioneer Iron Company either at Negaunee or elsewhere, from 1864 to 1890, inclusive.

4th. Such books or records as will show the particular business in which the Pioneer Iron Company was engaged from 1866 to 1890, inclusive.

Then and there to give evidence and the truth to say in a certain action pending in the circuit court for the county of Marquette and State of Michigan, in chancery, wherein The Negaunee Iron Mining Company, Edward N. Breitung and Mary Kaufman are complainants, and William G. Mather, Murray M. Duncan, The Iron Cliffs Company and The Cleveland Cliffs Iron Company are defendants, on the part of the complainants.

This in nowise omit, under the penalty of the law.

Given under my hand and official seal, this 8 day of December, A. D. 1900.

A. W. BARBER,
Notary Public.

[SEAL.]

Said subpœna is indorsed showing service upon George A. Garreston, Edwin V. Hale, James H. Hoyt, Frank B. White, Christopher McMahon, Edwin R. Perkins and J. H. Wade, Jr.; William G. Mather and Robert C. Mann not found.

The copy of the subpœna served upon the witness was thereupon received in evidence, and marked Complainants' Exhibit E, and is a copy of Complainants' Exhibit D.

Defendants objected to this document for the same reason as before.

I have not the custody of the books of the Pioneer Iron Co. I understand they are in the hands of Hoyt, Dustin & Kelley.

647 Objected to.

I don't know who took them to Hoyt, Dustin & Kelley. They were not in my custody, and never have been. I do not know whose custody they were in prior to the time they were taken to Hoyt, Dustin & Kelley. When I received the subpœna I called up the offices of the Pioneer Iron Co. and asked if the books were there, and I was told that they were not. That office is in the Mercantile Bank building, in the same offices as the Iron Cliffs Co., I think.

Objected to as incompetent and irrelevant.

I don't know who it was come to the telephone, but I asked him where the books were and I was instructed they were in the hands of Hoyt. Dustin & Kelley. I have never seen the books of the Pioneer Iron Co. There have been no meetings of the company since I was elected secretary. I know nothing whatever about the books and records. I never took any part in the making of those books, nor in the issuing of certificates of stock, nor have I ever seen the certificate of stock book.

Objected to as irrelevant and improper.

I have never seen the stock ledger. (Same objection.) I have never had occasion to have the books of the stockholders' or directors' meetings of the Pioneer Iron Co. in my possession. (Same objection.) I have done nothing as secretary of the Pioneer Iron Company since I took that office. I receive no salary. I have made an effort to obtain the books of the Pioneer Iron Co. (Same objection.) I have made other efforts than telephoning the offices of the company. I went to the offices of Hoyt, Dustin & Kelley and made demand for the books. They said I could not have them. They said they would not give them to me. They knew I was the secretary of the company. I did not ask for the books when I was elected secretary. I understood that I was entitled to the custody of the books.

648 (Objected to as leading and improper.) The reason I didn't go and demand the books of the Pioneer Iron Co. when I was elected secretary was there had been no meetings and no business that I had to do, and I had no occasion to. In fact, I never thought very much about it. (Same objection.)

Hoyt, Dustin & Kelley did not give any further or other reason for not producing the books of the Pioneer Iron Co. than those which I have now stated in court. Mr. Kelley gave me the reasons at their offices why they would not let me have the books.

Mr. KELLEY: Mr. Kelley desires to state that in addition to the reasons which the witness has stated, he told the witness when he

asked for the books, that the production of them could not be required in this proceeding, and that, therefore, he would not hand them to him.

Mr. SHAULL: Solicitor for complainants now moves to strike out of the record the statement of Mr. Kelley without oath and voluntarily made as to the reasons why the witness was not given the books.

I have never made an examination of any kind of the books or papers of the Pioneer Iron Co. or gone into its business in any way. I told Mr. Kelley of Hoyt, Dustin & Kelley that a subpœna had been served upon me to produce those books here in court, and that I was there in pursuance of that subpœna.

Objected to as incompetent and irrelevant.

And it was after that that he refused to let me have the books. (Same objection.) I will produce those books in court before the notary here if I can get them from Hoyt, Dustin & Kelley.

Mr. KELLEY: Mr. Kelley, who was present representing that firm, desires to state in the record, in order that the gentleman may be saved trouble in this matter, that Hoyt, Dustin & Kelley will
649 not produce the books in this proceeding, and will not surrender them to the witness for the purpose of being produced here.

Cross-examination by Mr. KELLEY:

As far as I know, there has never been any meeting of the company since the meeting at which I was elected, and I was not present at that meeting. There have been no stock transfers made since that meeting that I know of. As secretary of the company I would have known if there had been. I have had no occasion to call for those books either for the purpose of writing up minutes or for the purpose of issuing stock certificates, or for any other purpose as secretary since my election.

When I came to Mr. Kelley's office, as I have stated, I didn't make a demand for those books as secretary of the company for general purposes, but I stated to Mr. Kelley that I had been served with a subpœna to bring the books before this notary, and Mr. Kelley said that for that purpose he declined to surrender them.

Re-direct examination by Mr. SHAULL:

It was yesterday that I made this demand.

CHRISTOPHER C. MCMAHON, sworn on the part of the complainants, testified as follows:

Direct examination by Mr. SHAULL:

My name is Christopher C. McMahon, age 51, occupation constable. I reside 45 Matthew street, Cleveland, Ohio. I am duly elected and qualified constable of Cleveland township.

I had placed in my hands by Mr. Barber subpœnas to serve in the case in which these depositions are taken. In regard
650 to the diligence I used in attempting to serve the subpœnas issued in this case, in which the name of Robert C. McMahon appears, upon Robert C. Mann, I will say that since that writ has been placed in my hands I have gone to his place of business no less than three times a day, and four times a day since the 8th day of this month, excepting last Sunday.

Objected to as incompetent and irrelevant.

When I called at the office I was informed by the gentleman at the desk (his name I don't know) I asked for Mr. Mather, Mr. White and Robert Mann. In reply he said: "Mr. Mather is not in our city; Mr. White is sitting there at his desk, and Mr. Mann is also back there." I then asked if I could go back there and see them. With that, some gentleman stepped out. He spoke to that gentleman; what they said I don't know. I didn't hear; but at any rate they told me that I could step into the rear and serve the writs. When I arrived there I found Mr. White and another young man, not Mr. Mann; Mr. Mann was not there to be found.

Mr. KELLEY: I give notice of a motion to strike that answer out as incompetent, irrelevant, and not responsive to the question.

The writ was placed in my hands for service on the 8th day of December, 1900. (Same objection as last.)

I served the writ on James H. Hoyt in his office on Water street in the presence of George A. Garretson, at 11 o'clock yesterday, or thereabouts. I didn't serve William G. Mather, as I believe myself he was not in the city.

Objected to as incompetent and irrelevant.

I made a diligent effort to find him and serve him.

Q. Have you given me all the reasons which you have for believing that Mr. Mann was in the office at the time you was there with the writ?

Objected to as leading, incompetent and improper.

651 A. I have given you all the reasons that I know of that bears facts with it.

(No cross-examination.)

Mr. KELLEY: Counsel for defendant- wishes to state in connection with the testimony of the witness to the effect of his having served Mr. James H. Hoyt with a subpœna, that Mr. Hoyt was obliged to go to Cincinnati last evening to attend the circuit court of appeals, in which he has an important case to-day; that Mr. Hoyt spoke to his partner, Mr. Kelley, before going, and desired him to state to the notary the reason why he was absent to-day, and to state that he expected now to return to Cleveland to-morrow morning, and would do so if the case in the circuit court of appeals was finished to-day. Since then we have not heard from Mr. Hoyt, but have telegraphed him this afternoon to ascertain if he will be back to-morrow. Mr. Kelley also states that to his personal knowledge this engagement in the circuit court of appeals is one of which Mr. Hoyt had notice at least three days ago.

Mr. SHAULL: Counsel for complainants moves to strike out the statement of Mr. Kelley as uncalled for, and not under oath.

The depositions of Edwin V. Hale, James H. Hoyt, A. C. Dustin, Frank B. White, Christopher C. McMahon, taken, on behalf of the complainants in this cause, on the 18th day of February, A. D. 1901, at the office of A. W. Barber, in the city of Cleveland and State of Ohio.

EDWIN V. HALE, sworn on the part of the complainants, testified as follows:

Direct examination by Mr. PENNINGTON:

652 I was called as a witness on or about the 11th of December, 1900. and testified in this case before Mr. Barber, a notary public here. I had nothing to do with the Iron Cliffs Co. I am still connected with the Pioneer Iron Co. as a stockholder and as secretary. I was interrogated in my examination before as to whether I had the custody of any books or papers of the Pioneer Iron Co. and as to my personal knowledge of such books and papers. I am in the same situation now that I was at that time. I do not know where the books and papers of the Pioneer Iron Co. are at present. I do not think I have ever seen them.

I don't know anything about the books and papers of the Iron Cliffs Co. whatever. I have been secretary of the Pioneer Iron Co. eight or nine months, I think. I didn't look it up this time, but I answered it last time. It is just the same as I said last time. It was sometime last spring, almost a year ago. I am a banker. I own about 900 shares of stock of the Pioneer Iron Co. I went over all this testimony before. I now state that I am secretary of the company, and I do not know where the books and papers are belonging to the company. I do not know who is the president of that company at the present time. No books or papers, nor the

control of such books and papers, have ever been given to me as secretary. I have not performed any official acts to my knowledge.

(No cross-examination.)

JAMES H. HOYT, sworn on the part of the complainants, testified as follows:

Direct examination by Mr. PENNINGTON:

My name is James H. Hoyt. 49 years of age. Reside in Cleveland, Ohio. I am a lawyer by profession. I have resided in Cleveland all my life. I have been counsel of the Pioneer Iron Co. I am the present counsel of the company. Mr. Dustin, Mr. Kelley,
653 Mr. McKeehan and myself are the members of our firm. The names of the other members in full are Alton C. Dustin, Herman A. Kelley. I don't know Mr. McKeehan's initials; I think it is Homer B. McKeehan.

Besides being counsel for the Pioneer Iron Co. I think sometime I was a director. I don't recollect definitely now without refreshing my recollection at what time. I think some four or five years ago. I think I was a director one or two years, but I am not very definite about the dates. I cannot state off hand the years. I am a director in some I should say 50 to 70 corporations, and it is pretty hard for me to recollect dates in regard to the time of my appointment, or of my service.

I held no other position in the Pioneer Iron Co. at any time. During the time I was director the main office of the company I think was in Michigan, but they held meetings here as well. My recollection is that Mr. Morse was secretary of the company while I was director. During the time I was director I think some of the books and papers of the company were kept at the main office in Michigan, but I am not sure about that. I do not know what books were kept. That was not in my province. I know nothing about whether those books have been removed from the Michigan office since that time. I do not know where the books and papers of the Pioneer Iron Co. are at the present time. They are not in my office to my knowledge. I think that I have seen the stock book and the record book at one time or another. I think I saw the record book several times. I could not particularize. I think I have seen it in the office of the company here at Cleveland.

The company has an office at Cleveland now. That is in the Mercantile Bank building. I am not sure whether the books are kept there at all. I have had nothing to do with the accounts,
654 and know nothing about the books. I think that at the time when the meetings of the directors were held the record book was there.

I have not been informed by any person where the books are at the present time. I have not asked, and have not been informed,

I appeared as one of the counsel for the defendants in this case at the first examination. I was not at the last examination. I was arguing a case in the circuit court of appeals at that time, and could not get here. I know to what you refer. I think you refer to Mr. Morse's testimony, in which he declined to produce the books on account of having delivered the books or some books—what they were I don't remember—to counsel. But Mr. Kelley, my partner, was the one to whom they were delivered, and I have no personal knowledge of the books. I assume that the books at the time mentioned by Mr. Morse were delivered to Mr. Kelley. I didn't see them at all. I will say I don't know whether Mr. Kelley has charge of the books now. Mr. Kelley has been absent.

Mr. PENNINGTON: Wait a minute.

WITNESS: What do you want me to wait for?

Mr. PENNINGTON: I want you to wait until I ask you a question.

WITNESS: I want to continue my answer. Mr. Kelley has been absent trying admiralty cases in Detroit——

Mr. PENNINGTON: I want this witness to answer my questions, and if he has any explanations to make, he may make them upon cross-examination.

WITNESS: I insist, Mr. Notary, that I have a right to answer the question as I see fit. Any objection that may be made to the question afterward is within the province of counsel.

The NOTARY: I suppose the notary does not have the right to pass upon the competency or relevancy of any answer.

655 Mr. Kelley has been absent trying admiralty cases in Detroit almost continuously since the last testimony was taken here in this case, and I myself have been almost constantly absent from the city during the same period, and I have had no consultation with Mr. Kelley on the subject, and know nothing whatever about it.

Mr. PENNINGTON: I move to strike out the answer of the witness as not responsive to the question.

I have been connected with the Iron Cliffs Co. as counsel during the last seven or eight years. I have also been a director during the same period, if I recollect rightly.

The Iron Cliffs Co. has an office in Ishpeming, Mich., and an office in Cleveland. The books are kept at both places, I think. I don't know whether the same books are kept at both places or not. I have nothing to do with the accounting department. I am sure I cannot tell you what books are kept at Negaunee, Mich., or what books are kept at Cleveland. I cannot tell you what books the company have. I suppose they have the usual books. I do not know where the books of the Iron Cliffs Co. are at present. I have seen some of the books—I think the record books. I don't think I ever looked over the others. It is no part of my business. I could not remember when I saw the record books. I have seen them at

various times. The books or any of them of the Iron Cliffs Co. are not now in my office that I know of. I didn't have the slightest talk with Mr. Kelley about them. I should be very much surprised if they were there.

I think I am a stockholder in the Iron Cliffs Co. and in the Pioneer Iron Co. I don't remember what amount of stock I own in the Iron Cliffs Co. I own stocks in so many corporations that it would be impossible for me without going to my inventory to tell what I do own. My recollection is that I own ten shares of stock in the Pioneer Iron Co. But I am not sure about that.

656 I may have seen the stock book of the Iron Cliffs Co. I could not state positively whether I have or not. I may have seen the stock book of the Pioneer Iron Co. I could not positively state whether I have or not.

I know a company that was organized in West Virginia called the Cleveland Cliffs Iron Co. I am the counsel of the company. I certainly had something to do with the organization of the company. My impression is that I was counsel for the Iron Cliffs Co. in May, 1891, but I am not perfectly certain. I think I was counsel for the Iron Cliffs Co. at the time that the question came up as to the advisability of organizing the Cleveland Cliffs Co. in West Virginia. I don't know whether I prepared a circular communication to the stockholders of the Iron Cliffs Co. or not. I don't remember that I saw such a circular.

Objected to in behalf of the witness and the party involved that any information of the witness as counsel of the company is privileged and cannot be given. Any matter that came within his knowledge while he was giving advice to his own client is privileged, if it was his client at the time.

Q. Do you know of the issuing of the circular by E. R. Perkins, J. H. Wade, Jr., and Wm. G. Mather, trustees?

A. I decline to answer that.

Q. For what reason?

A. Because I was acting as counsel for those gentlemen.

Q. Then you were acting as counsel in the issuing of that circular about that time, May 18, 1891?

A. I have stated that without refreshing my recollection. When you talk to me about any particular circular I cannot answer; but any circular in regard to the Iron Cliffs that was issued by Messrs. Perkins and Mather, as trustees, my connection with it was professional.

657 Q. Did the Iron Cliffs Co. by its officers or trustees acting in its behalf issue a circular to the stockholders of the company suggesting the organization of the Cleveland Cliffs Co. and the transfer of their stock to trustees for that purpose, in which the following language was used:

"GENTLEMEN: In February, 1890, a syndicate of Cleveland gen-
"tlemen represented by the undersigned as trustees purchased

"14,005 shares of the capital stock of the Iron Cliffs Company, being "a controlling interest therein, such purchasers also owning a con- "trolling interest in the stock of the Cleveland Iron Mining Com- "pany. Deeming it for the mutual advantage of the two companies "that a combination of such be effected, and not wishing to bring "about a consolidation, by which valuable privileges now possessed "by the companies would be lost, the syndicate whom we represent "has perfected a plan for the organization of a new company under "the laws of the State of West Virginia, to be known as the Cleve- "land Cliffs Iron Company, with a capital stock of $5,000,000.00, "divided"—so and so?

Objected to as privileged, if the witness was acting as counsel, as he says he was; and also as immaterial and incompetent.

A. I decline to give any testimony on the subject of that circular, for the reason that any knowledge that I have in regard to it was knowledge that came to me through my professional capacity.

Q. If a circular of that kind was issued, what was meant by the words, "not wishing to bring about a consolidation by which valuable privileges now possessed by the companies would be lost"?

Same objection by defendants.

A. I decline to state that, on account of the fact that any information in regard to that came to me professionally.

658 I don't recollect whether I was a stockholder at that time or not. I have been a stockholder of the Cleveland Cliffs.

Q. Wasn't you a stockholder in the Iron Cliffs?

Objected to.

A. The information that came to me on that subject did not come to me as a stockholder; it came to me as counsel.

My recollection is that I was at the same time director of the Iron Cliffs Company. I state that the information I had respecting this scheme for the organizing of the West Virginia Company came to me as counsel, and not as a stockholder or director, because I was elected a director simply to attend the meetings of the board of directors as counsel.

I decline to state whether the Iron Cliffs Company purchased the stock of the Pioneer Iron Company. My information in regard to that came to me in my professional capacity. I know a Mr. T. B. Brooks in Cleveland. I didn't know that he was connected with the Pioneer Company. The Brooks that I knew in Cleveland is living here. If that is not the one you meant, then I know of no other Brooks. I don't remember a man by the name of Brooks that negotiated the attempted purchase of the stock of the Pioneer Iron Company in behalf of the Iron Cliffs Company. If I ever knew him, however, and had anything to do with him, I did it professionally. I don't know of the purchase of the stock of the Pioneer Iron Company by the Iron Cliffs Company for an examination of the

books. If I have any information on that subject it has came to me as counsel.

Q. Have you any information on that subject?

Objected to for the same reasons as before.

A. If I have any information it has come to me as counsel.
659 I have a certain information. I will not state that information for the reason that any information I have has come to me as counsel, and is, therefore, privileged, and I have no right to communicate it.

I don't know that the stock of the Pioneer Iron Company has been considered by the Iron Cliffs Company and scheduled among its assets for a good many years back. I decline to state whether I had a talk with the officers of that company and the directors of that company with respect to the stock of the Pioneer Iron Company. If I have had such conversation it has been with me as counsel. I say most positively that I have had no communication, no conversation, obtained no information of these matters except as counsel. I say that I have received no information of the affairs of the Pioneer Iron Company or the Iron Cliffs Company as a director or stockholder, for the reason that I have been made director of these companies simply on account of my position as counsel, and for no other reason whatever.

I am unable to say that I was one of the gentlemen that I referred to here as having formed this syndicate for the purchase of 14,005 shares of the capital stock of the Iron Cliffs Company. If a circular communication was issued to the stockholders of the Iron Cliffs Company such as you have indicated, I knew and understood its contents as counsel.

Q. Did that circular contain the following statement:

"3rd. The Iron Cliffs Company has a valuable privilege, which would necessarily be wiped out by the consolidation. By special legislation, procured to be passed through Mr. Tilden, the Iron Cliffs Company now has the peculiar right of owning stock in sub-companies, under this special legislation, it owns the stock of the Excelsior and Pioneer Companies. This right, on consolidation,
660 would necessarily be taken away, as the new corporation could only exercise and be possessed of the privileges allowed to a corporation newly formed under the Michigan statutes."

A. I decline to answer that question, for two reasons: In the first place, if such a circular was issued, it itself is the best evidence of what it contained; and in the next place, any information I have in regard to that circular and its contents came to me in my professional capacity.

I think I am at the present time a director of the Iron Cliffs Company.

Q. Are you also a director or have you any office in the Pioneer Iron Company, so-called?

A. I think I am a director of the Pioneer Iron Company. As I

say, I am a director in some 60 or 70 corporations and you ask me offhand.

Q. I don't care about the others.

A. But I am giving that as a reason for some indefiniteness.

I don't specifically recollect anything about a mortgage given by the Iron Cliffs Company to E. H. Miller and Abram S. Hewitt, trustees, about the 22nd day of September, 1874; but if my recollection were refreshed, any information on that I would have came to me as counsel, and in no other capacity. If I have any knowledge as to the contents of that instrument it is because I have examined it as counsel.

Q. Have you such information?

Question objected to, except for mere preliminary purposes, as irrelevant and incompetent.

A. Any information I have is professional, and came to me in my professional capacity.

I have not examined that mortgage, if I ever examined it, for some ten years, and I have no definite information on the subject.

661 Q. I will ask you further, did that instrument contain according to your information and recollection the following clause:

"This indenture further witnesseth, that the said parties of the first part has, for the like consideration, granted, bargained and sold and by these presents does grant, bargain, sell, assign, transfer and set over unto the said parties of the second part and the survivor of them, and their or his successors in this trust, all the right, title and interest of the said party of the first part in, to and concerning the capital stock of the Pioneer Iron Company and the capital stock of the Excelsior Iron Company, both being corporations of said State of Michigan?"

A. I have no recollection in regard to that instrument at present, as I have not had any opportunity of refreshing my recollection. I do have a recollection, however, that either all, or a large part of the capital stock of the Pioneer Iron Company was held by Mr. Abram Hewitt, as trustee. I have no recollection as to whether or not it was held by Mr. Abram Hewitt as trustee under and by virtue of this instrument as security for the payment of the debt, and assigned to him or pledged to him by the Iron Cliffs Company.

Q. How do you understand that Abram S. Hewitt became the trustee of the stock of the Pioneer Iron Company?

A Simply for this reason: That if I recollect rightly, at some of the early meetings that I attended years ago, the stock of the Pioneer Iron Company was voted by Mr. Abram Hewitt; and I don't know whether all of it was, but I think some of it was, and some of it stood in his name. That is all the information that I have at present as to his trusteeship, because I have not refreshed my recollection.

662 As a director of the Iron Cliffs Co. I have met the other directors of the Pioneer Iron Co. from time to time. All the information I have as to whether the Iron Cliffs Company claims to own the stock of the Pioneer Iron Company came to me as counsel, because I was elected a director of the companies simply because I was counsel, to give them advice in their meetings, and that is the reason I decline to answer.

Cross-examination by Mr. HAYDEN:

Q. Do you remember it to be a fact that ever since you have known anything about the Pioneer Iron Company some portion of the stock—what portion I don't know, but some portion of it—has been owned by other parties than the Iron Cliffs Company?

A. That is my recollection, yes, sir.

Re-direct examination by Mr. PENNINGTON:

I don't recollect the amounts. I think that at one time a very large portion was owned, but I could not speak definitely as to amounts—I mean was owned by individuals, by other parties. I am not sure in regard to the amounts.

ALTON C. DUSTIN, sworn on the part of the complainants, testified as follows:

Direct examination by Mr. PENNINGTON:

My name is A. C. Dustin, age 41 years, occupation attorney-at-law, residence Cleveland, Ohio. I am a member of the firm of Hoyt, Dustin & Kelley. I have resided in Cleveland some 16 years. I have been connected with the Iron Cliffs Company simply as a member of the firm of Hoyt, Dustin & Kelley. Some of the 663 law business of that concern has been done in our office, and I have occasionally, as one of the partners, had to do with some one thing or another incidental to being a member of the firm. I am not a stockholder in the Iron Cliffs Co. I hold no position in that company, aside from counsel. I don't recall that I have ever seen any of the books and papers of the Iron Cliffs Co. I might have seen them, but I have no recollection of ever having seen the papers or books. I do not know where they are at the present time. They are not in my office that I know of.

I have understood that Mr. Hoyt and Mr. Kelley have been engaged in the litigation known as the 99-year lease matter, and so far as any business that has been done they have had charge of it. I have no charge of it at all, and have not known anything about it. I simply know that there is a matter of that kind in the office, but who has done the work or where it has been done I know nothing about it, no more than though it were in another office. I have

prepared no briefs, have seen no pleadings, have not seen a paper connected with the case.

I am not connected with the Pioneer Iron Co. at all, never had any connection with that company. I do not know anything about the whereabouts of the books of that company. I have never seen any of the papers, nor never known anything about them.

CHRISTOPHER C. MCMAHON, sworn on the part of the complainants, testified as follows:

Direct examination by Mr. PENNINGTON:

I am the officer that served the subpœna upon those of the witnesses here to-day that I found.

Q. Whom did you find? Give a list of those that you found, and upon whom you served a subpœna.

664 Objected to as the officer's return is the best evidence.

A. I have the list up in my office. May I see this, please, just a moment? I served Mr. George A. Garretson personally; Mr. Edwin V. Hale, Alton C. Dustin, Mr. Frank B. White, Mr. Edwin R. Perkins, and the Hon. James H. Hoyt.

As to those witnesses who have attended, that I subpœnaed, I have only seen Mr. Hoyt, Mr. Dustin, and Mr. White has now arrived. Mr. Garretson has not attended to my knowledge. I did not see him if he did.

Q. You may state the names of the persons contained in the subpœna upon whom you made an effort to get service.

Objected to as incompetent and immaterial.

Q. Did you make an effort, and if so what effort, to subpœna the persons who are named in the subpœna, that have not been mentioned by you as having—upon whom you made service?

Same objection.

A. I have endeavored to serve each and every name given to me in this list twice a day, with the exception of to-day.

In attempting to find William G. Mather, I went to his office, and was there informed that he was out of our city. I went to Wm. G. Mather's office twice a day, with the exception of to-day, since the writ was placed in my hands. I called at Herman A. Kelly's office, the office of Hoyt, Dustin & Kelley, twice a day Thursday and Friday, and three times upon Saturday. I did not find him. I made the same effort to get Homer H. McKeehan. I did not find him. In attempting to subpœna Robert C. Mann I called at that office twice a day each day, with the exception of to-day, and to-day once. I did not find him. I did not learn where he was, but was informed that he was out of our city.

665 Cross-examination by Mr. HAYDEN:

Mr. Garretson is the president of the National Bank of Commerce. He has just telephoned me that he was engaged in a matter that he could not leave, and asked permission to be permitted to give testimony after lunch.

FRANK B. WHITE, sworn on the part of the complainant-, testified as follows:

Direct examination by Mr. PENNINGTON:

I was called before as a witness in this case and examined. I am connected with the Cleveland Cliffs Iron Company as an employé in the capacity of general book-keeper, and in the same capacity with the Iron Cliffs Company. I was served with a subpœna to attend here to-day and to produce some books and papers specified in the subpœna. I did not bring them because they were not under my charge. I do not know where they are, nor who has charge of them. I have seen them at times. If there are any entries to be made on the books they are handed to me to make such entries. I am now referring to the general books of all the companies used in that office. Besides the Cleveland Cliffs Company, the Iron Cliffs, Michigamme and Cleveland Iron Mining and the Pioneer at times. I last saw the books of the Iron Cliffs Company and of the Pioneer Iron Mining Company within a week or ten days, I presume. I refer to the Cleveland Cliffs office at Cleveland, in the Mercantile Bank building. I don't know whether these books that I refer to are down there now or not.

I saw them eight or ten days ago. They were on my desk at that time. I have not seen them since. They were taken from my desk some four or five days before I was served with this sub-
666 pœna. I don't know where they were taken to. I could not say whether they were taken out of the office. I did not make any inquiry for them. I did not make any inquiry for them after I was served with a subpœna to produce them here to-day because I had no right to. I had no use for them.

No one advised me that I was under no obligation to produce them. I don't know whose charge they were in. I am general book-keeper of these companies. When I have to make entries they are turned over to me to make the entries, and that is all I have to do with them. When I am not using them they have to be put away in the vault. The porter would collect them and put them in there. I do not mean to say that the porter has charge of those books. I don't know who has charge of them. I am the book-keeper of the Iron Cliffs Company and of the Pioneer Iron Company and of the Cleveland Cliffs Company.

Q. You say you don't know who has got charge of those books?

Objection by the defendants to the continued repetition of questions in each case answered by the witness.

A. I don't know who has charge of them.

Cross-examination by Mr. HOYT:

I am not the head of the accounting department. Robert C. Mann is. I am not a general officer of any of these companies. All my function is to make entries when the books are turned over to me by my superior officers to make such entries as they direct.

Re-direct examination by Mr. PENNINGTON:

I don't know that Robert C. Mann has the general charge of those books. I simply say that he is the head of the accounting department.

667 The deposition of Nathan M. Kaufman, taken, on behalf of the complainants in this cause, on the 11th day of March, A. D. 1901, before Reuel W. Bridge, in the city of Chicago and State of Illinois.

Present at said examination, S. W. Shaull, Esq., solicitor for complainants; and H. F. Pennington, Esq., solicitor for complainants. No one appearing for and on behalf of the defendants.

NATHAN M. KAUFMAN, sworn on the part of the complainants, testified as follows:

Direct examination by Mr. SHAULL:

My name is Nathan M. Kaufman. Residence, Marquette, Mich. Occupation, banker; 38 years of age. I have resided in Marquette, Mich., all my life. I am the husband of Mary Kaufman, one of the complainants in this litigation. I remember the transaction whereby Mary Kaufman on January 28, 1899, acquired a ¼ interest of certain property in section 5, 47–26, by warranty deed from William D. Rees. The consideration was $55,000. I acted on behalf of Mary Kaufman in the negotiation leading up to the purchase of this land. My attorney at Marquette, Mr. Eldredge, made efforts at that time to ascertain the state of the title of the land so purchased. His instructions were to examine the records and see if the title was clear, and if there was a clear title I would pay for the deed of Mr. Rees. I imagine he made such examination, because he told me the deed was all right, and that the title was all right. Mrs. Kaufman and myself relied upon the fact that there was nothing in the public records that would militate against our title. The purchase was made upon that advice.

I remember about the transaction on December 8th, 1893,
668 by which Edward N. Breitung acquired from certain people, including Mr. Hewitt, Mr. Ramsey and Mr. Jones, for the sum of $43,000.00, an interest in certain lands in sections 5, 6, 7 and 8, 47-26, in Marquette county, Mich. I remember that on January 2, 1894, an undivided one-half of this interest was transferred to Mary Kaufman. There was an understanding between Mrs. Kaufman and Edward N. Breitung that Mrs. Kaufman was to have one-half of the land purchased, upon the payment by her of half of the purchase money. That transaction was carried out. I acted for Mrs. Kaufman. I did all the business for her.

We had the records examined by counsel, and he said the title was good and clear and did not believe the 99 year lease was in force, and that it would not affect this property. He said the Pioneer Iron Co. was dead, and they had no rights. I relied upon that advice. I would not have purchased the land had I not been advised that it was dead. Mrs. Kaufman understood as I did. I think the same advice was given to Edward N. Breitung, because we talked the matter over and in the same manner after search of records by counsel. It was because of that that we concluded to purchase. My counsel said by the examination of the records he could say that the Pioneer Iron Co. was dead, and he did not think that there was any danger in our making that purchase. He did not attempt to give any reasons.

I am fairly familiar with all the lands owned by the Pioneer Iron Co. in sections 31 and 32, 48–26, and the N. ½ of sec. 6, and the S. E. ¼ of sec. 5, sec. 4, sec. 3, sec. 2 and sec. 1, 47–26; and in sec. 6, 47-26, located in or near the city of Negaunee. I think I can say that I have been fairly familiar with such lands for at least 15 years last past. I am familiar with the lands in sections 5, 6, 7 and 8, which were originally covered by this old Pioneer Iron Co. lease.
669 I can say that at least in the last fourteen years I have been familiar with them. I was virtually the manager of them all that time. At the time I took hold of these lands, the Negaunee Iron Co., Hewitt, Ramsey, Jones and the Breitung interest were in the actual, open and undisputed possession of them. I cannot give the date. It was before I became manager that these people were in the open and undisputed possession of this land. I know that I was in Negaunee in 1882. That was at least 2 or 3 years before I had charge. I never heard of anybody else being in possession or claiming title to these lands saving the Negaunee and Manganese Iron Companies and the parties I have mentioned. They were exercising all the acts of ownership which fee simple owners usually exercise over their property. Since that time down to the present time, exclusive of the time from Dec. 25, 1899, to about Jan. 1, 1900, they had entire control. They paid all the taxes, covering the land occupied by them, made some leases. There were lessees of the land; all was done in an open manner.

Q. State whether or not the Pioneer Iron Company ever attempted

in these fourteen years or more to take possession of or in any manner exercised ownership or control over any of this land.

A. They never did. They never tried in any way, shape, form or manner.

I remember down to the time prior to their coming on there in the night time with their teams and houses. I cannot tell the exact date that they moved on there, about the beginning of the year 1900. I have been familiar during the last 15 years with the mining companies and mines operating about Negaunee. The Pioneer Iron Co. during the last 15 years has not conducted any business, hired any help, done any mining, or any other work of any kind in or about the city of Negaunee, to the best of my knowledge. I
670 have been sufficiently familiar with the mining business done in that vicinity to have known it if they had. It has no office in Negaunee to my knowledge.

The general understanding among the people of Negaunee during that time has been that it was dead, and its property merged in the Iron Cliffs Co.

I am acquainted with George W. Hayden, solicitor for defendants in this case. I had a talk with him when his company were negotiating with William P. Healy in regard to the acquiring of one-half interest in the stock of the Arctic Iron Co. I always understood he represented the Iron Cliffs Co. He has made purchases of land and other things that the Iron Cliffs Co. has paid for. It was generally understood that he was their representative. I should judge that this conversation took place some two or three years ago, just before the purchase of their one-half interest in the Arctic Iron Co. before this litigation arose.

Mr. Hayden came into my office one day, at the bank, and told me he was negotiating for one-half interest in the Arctic Iron Co. with William P. Healy, and that he had an option on it for $125,000.00; that he did not want to pay that much money for it, and it was rather hard; and he said: "If you should see Healy at Chicago, tell him I can't pay this amount of money for this half interest in the Arctic Iron Co. on account of this 99 year lease." I told him that I thought that saying this to Healy would not affect his mind in regard to the price, or that his stock would be worth any less on account of this 99 year lease; that Mr. Healy, as well as myself, knew the Pioneer Iron Co. was dead and the 99 year lease of no effect. And I said to him: "George, I believe you think the same thing." "Well," he said, "I do, but I want to use it as a sort of club on Healy."

I have no knowledge as to who operated the old Pioneer
671 Iron Co. furnaces except that the Iron Cliffs Co. paid all the men and that sort of thing. I can remember back about these premises, say 26 years ago, probably longer. There has been exploring done on these lands that were covered by the 99 year lease by the lessees and by the owners. The Davis and the Milwaukee mines have been operated within the last 15 years. There was not

as much ore shipped away within the last fifteen years as there was prior to that time, say five years prior, because the Milwaukee shipped more prior to that time. It is my impression that the Davis Mining Co. operated since 1895. There were buildings built, shafts opened, drifts run, railway tracks put in, machinery installed, pumps placed and skips put in by the owners and lessees within that time upon these lands. There were millions of tons of ore shipped off this property.

Neither Mr. Hayden nor any representative of the Pioneer Iron Co. ever said a word as to why they stood by and saw this money expended without asserting any rights. Mr. Maitland was manager of the Iron Cliffs Co. in Negaunee for years, and afterward Mr. Gibbs manager. To my knowledge they never said anything to anybody representing the owners about any objections they had to this improvement and operation of these lands. They knew about it. They lived only a short distance from these lands.

The paper you show me marked on the back "For identification" and signed by the initials of the officer before whom these depositions are being taken, "R. W. B.," is a proposed form of option and lease of the Arctic Iron Co. and the Pioneer Iron Co. Mr. Hayden and Mr. William G. Mather asked the Arctic Iron Co. for a lease of some of its lands sometime in 1899. This is the form they sent to me or Mr. Breitung at that time. They told me they would
672 be willing to accept an option on the land and accept this form of lease. That is the form of lease that the Pioneer and Arctic Iron Companies agreed upon at the time of the settlement of the partition litigation which was begun in 1899.

Said deposition was taken upon a notice regardless of objections thereto which were returned with the deposition.

And said notice and proof of service thereof and the heading of the deposition, the objections to the taking of said deposition and the note attached to the said deposition by said notary relating to the receipt of said objections, are as follows (omitting the title of the cause):

(Title of Cause.)

Please take notice, that the testimony of Nathan M. Kaufman, of the city of Marquette, Marquette county, Michigan, who is a necessary and material witness on behalf of the complainants in the above entitled cause, will be taken by deposition *de bene esse* before Reuel W. Bridge, notary public for Cook county, Illinois, and authorized under the law of the State of Illinois, to administer oaths, at room 516 Chamber of Commerce building, in the city of Chicago, county of Cook and State of Illinois, on the 11th day of March, 1901, at ten o'clock in the forenoon, at which time and place you are notified to attend.

This testimony is to be taken for the reason that the said witness is about to go and remain indefinitely outside of the State of Mich-

igan, and is about to go and remain until after the hearing of this cause, more than fifty miles from the place of trial.

Dated Marquette, Michigan, March 7, 1901.

S. W. SHAULL,
Solicitor for Complainants.

To George Hayden, solicitor for defendants.

673 STATE OF ILLINOIS, }
County of Cook, } ss:

Before me, a notary public in and for said county, on the 11th day of March, 1901, personally appeared Scott W. Shaull, who, being by me duly sworn, deposes and says: That on the 7th day of March, 1901, deponent did serve upon George Hayden, Esq., solicitor for the within named defendants, at the city of Lansing and the State of Michigan, county of Ingham, a notice of which the within and foregoing is a true copy, by then and there delivering the same to the said George Hayden, personally; and further deponent saith not.

SCOTT W. SHAULL.

Subscribed and sworn to before me this 11th day of March, 1901.

[SEAL.] R. W. BRIDGE,
Notary Public in and for Cook County, Illinois.

(Title of Cause.)

Deposition of Nathan M. Kaufman, a witness produced on behalf of the complainants in the above entitled cause, and duly sworn and examined on the 11th day of March, A. D. 1901, at ten o'clock a. m. on said day, at the office of Reuel W. Bridge, 516 Chamber of Commerce building, in the city of Chicago and State of Illinois, by virtue of a notice duly served upon George Hayden, solicitor for the defendants in the above entitled cause, a verified copy of which notice, with proof of service thereof, is hereto annexed.

Present at said examination: S. W. Shaull, Esq., solicitor for complainants, and H. F. Pennington, of counsel for complainants. No one appearing for or on behalf of the defendants.

674 Attached to said deposition and returned therewith is the following note and letter referred to therein:

NOTE.—I attach hereto a letter received by me, through the United States mail at the hour of 10:45 a. m., March 11, 1901.

R. W. BRIDGE,
Notary Public.

Colonial hotel, Cleveland, Ohio, McCreary & Furst.

CLEVELAND, *March* 10, 1901.

Mr. R. W. Bridge, 516 Chamber of Commerce, Chicago, Illinois.

DEAR SIR: A notice has been given me as attorney for the defendants to take testimony of Mr. N. M. Kaufman, before you tomorrow morning at ten o'clock.

I cannot be present, nor have I anyone to represent me and the time given is too short to enable me to make any preparation whatever to get someone else to whom the case could be explained, to appear to cross-examine. The notice was given me while absent from home on business, which still keeps me engaged.

I am compelled to object to the taking of this testimony.

1. For insufficient time given in the notice—it is unreasonable.

2. For inability on the part of defendants to appear or obtain representation on Monday, the time fixed.

3. Because the witness is a resident of Marquette, where the *suit* is pending, and husband of one of the plaintiffs and the reason for taking his testimony is insufficient.

4. The notice was given me while absent from home on business which attorneys for complainant are advised of and which continues to require my exclusive attention and keep me absent.

I wish you would embody this letter in your record if you do proceed to take the testimony.

Yours respectfully,

GEO. HAYDEN,
Solicitor for Iron Cliffs Co. et al.

675 The deposition of Fred A. Morse, taken in this cause on behalf of the complainants at the city of Cleveland and State of Ohio, on the third day of December, A. D. 1900, before A. W. Barber, notary public.

FRED A. MORSE, sworn on the part of the complainants, testified as follows:

Direct examination by Mr. SHAULL:

My name is Frederick A. Morse, age 65. I reside at Cleveland, and am secretary of the Iron Cliffs Co. I have been secretary eight or nine years. I am secretary of the Cleveland Iron Mining Co. and Excelsior Iron Mining Co. and of several other companies.

Objected to by the defendants as incompetent and irrelevant.

Q. You now say that you are not secretary of the so-called Pioneer Iron Co., do you?

Objected to by defendants, as it is based on an illegal presumption that the Pioneer Iron Company is not duly incorporated and in existence.

A. I say no.

The witness continues:

I have been. (Same objection renewed by defendants.) I don't remember the exact year, but it was along about 1891 or 1892. (Same objection by defendants.) I severed my connection with it about a year or so ago. I don't remember the exact date. (Same objection by defendants.) It was between one and two years ago. I cannot give the exact date nearer than that. (Same objection by defendants.) Mr. Hale took my place. (Same objection by defendants.) I believe Mr. Hale is a resident of Cleveland. (Objected to for the same reasons as before.) I am personally acquainted with him (Same objection by defendants.) During the time I was secretary of the Pioneer Iron Co., I had possession of the record books of that in-
676 stitution. (Same objection by defendants.) The books of accounts were kept some at Negaunee and some here at Cleveland. (Same objection by defendants.) I could not tell what accounts were kept here. I kept the record books, not the account books. (Same objection by defendants.) The account books were kept by the bookkeeper in the office. (Same objection by defendants.) His name was F. B. White. He is still in the office of the Iron Cliffs Co. He still keeps that set of books. (Same objection by defendants.) I am talking about the Iron Cliffs Co. at Cleveland now.

Q. All the books of account of the Pioneer Iron Company, except those containing the running expenses of the office at Cleveland, were kept at Negaunee, were they not?

Question objected to by defendants as leading.

A. I don't know.

Q. Do you know that there were any accounts kept in the books at Cleveland, except those which appertain to the running expenses of the office and the payment of salary of officers at Cleveland?

Question objected to as incompetent and immaterial.

A. I do not.

I never had any occasion to examine the account books of the so-called Pioneer Iron Co. and know nothing of them. The same bookkeeper kept the books of the Iron Cliffs Co.

Objected to by defendants as incompetent and immaterial.

I have no knowledge as to those books except that I know there are such books in the office and that he keeps them.

Q. He still keeps that set of books belonging to the Iron Cliffs Co. as well as the set belonging to the so-called Pioneer Iron Co.?

677 The same objection as before, in that it assumes that the Pioneer Iron Co. has no legal existence.

A. Yes, sir.

I don't know how I came to be appointed secretary of the Pioneer Iron Co.

Objected to by defendants upon the ground that the question is incompetent and immaterial.

I don't know as I can tell you how I came to be appointed secretary of the Iron Cliffs Co. except that I was in the office as secretary of the Cleveland Iron Mining Co.

Same objection as before.

I think it was a year or two after William G. Mather was made president of the Pioneer Iron Co. that I was appointed secretary of that company. My recollection is that Mr. J. H. Sheadle held the office between the time he was made president and the time I was appointed. I have been employed in the office of the various corporations of which Mr. Mather and his friends have control since 1863.

Objected to by the defendants as incompetent.

I acted as secretary for his companies for some time after I went into the office. My first position in his office was that of bookkeeper. I was not a bookkeeper in 1866 or 1867 of the Iron Cliffs Co. I don't know who was. I never was their bookkeeper.

I have an indistinct recollection of the Iron Cliffs Co. authorizing certain amounts of stock to be purchased.

Q. Was that stock which was authorized to be purchased the entire capital stock of the Excelsior Iron Company and the Pioneer Iron Co.?

Objected to by defendants as incompetent; and the witness is not competent to testify to that from his recollection.

A. I could not answer that question. I don't remember.

I do remember that the Iron Cliffs acquired and owned
678 certain portions of the stock of those two companies. I could not say that it owned it all or not. I am not acquainted with John H. Abele, nor with C. J. Canda, nor with H. Groenemeyer, all of New York city, nor with George M. Miller of Montmore, New York. I am slightly acquainted with Alexander Maitland of Negaunee, Mich. I have met him two or three times. I do not know Frederick Hudson of New York city, nor Abram S. Hewitt, surviving trustee, of New York city. I have no knowledge of the position those gentlemen held in the Iron Cliffs Co. upon the 18th day of October, 1889. I had the record books of the Iron Cliffs Co. and the Pioneer Iron Co. during the time I had been secretary of those organizations. The account book that has been kept in Cleveland of each of those organizations are in the office of the companies.

Q. Did you not have, as secretary of the Pioneer Iron Co., so-called, the custody of that account book?

Objected to by defendants as leading.

A. No.

I had access to the account books. I had access if I chose to look at them, but I had no occasion to. I had access so that I could have gone and got it at any time, and that is true at present of the Iron Cliffs books.

Q. You have been served with a *duces tecum* subpœna to produce the record and account books of the Iron Cliffs Co. here to-day before this officer, so far as they show certain things, have you not?

Objected to by defendants as the subpœna itself is the best evidence and the subpœna does not call for any account books.

A. I have not seen any notice requiring me to return the account books, to bring them here.

679 Q. You had notice, or a *subpœna duces tecum* I would say, to produce the record books showing the proceedings of the stockholders and directors of said Iron Cliffs Company, from January 1st, 1866, to December 1st, 1890, did you not?

Objected to by the defendants, on the ground that it is leading and is misleading, as the subpœna does not call for the books named in the question.

A. I had notice to produce the books of record.

Mr. KELLEY: I give notice of a motion to strike out the answer, as not the best evidence of what the notice contains.

The paper you show me is the copy that I received served by the officer in this cause to produce certain books therein mentioned. I received the paper on Saturday last.

Paper marked Complainants' Exhibit A1, for the purpose of identification.

The witness continues:

Complainants' Exhibit A1 is the paper that was served upon me.

Counsel for complainants thereupon offered Complainants' Exhibit A1 in evidence.

Said Complainants' Exhibit A1 is a copy of Complainants' Exhibit A2, by C. C. McMahon, constable.

I have not those books in court.

Q. Why did you not produce them?

A. Well, they were delivered to the attorneys of our company on Saturday and they were out of my control.

Q. Were they delivered before or after the paper was served upon you?

Mr. HOYT: If you don't recollect, say so.

A. It was after the paper was delivered.

I didn't deliver the books to the attorneys. The auditor of our

company delivered them, by request, I suppose, of the attorneys. They were delivered to the firm of Hoyt, Dustin & Kelley. I presume they now have those books in their possession. I don't know.

680 Q. Will you obtain and bring those books into this court?

Mr. HOYT: Counsel for defendant- The Pioneer Iron Co. and The Iron Cliffs Co. will state that they have advised the witness that he is not obliged to produce the books under the subpœna.

Complainants' counsel moved to strike out the foregoing statement on the ground that it is uncalled for by the question.

A. I am not able to do so.

I am not able to deliver the books or bring them here. I have made an effort to obtain them. I requested the attorneys to allow me to bring them. My recollection is they said they would not deliver them, that it was not proper to be brought here.

Q. They knew a subpœna had been served upon you at that time to bring those books here, did they not?

A. I presume they did, yes.

I am still the secretary of the Iron Cliffs Co. I don't think I was secretary on the 4th day of May, 1891. I became secretary after that. I don't know who was secretary upon that date. I don't remember who was secretary immediately before me. Between 1890 and 1892 there were, I think, two different persons that served as secretary. My recollection is that one was James H. Hoyt, and I think the other—I think Mr. Sheadle served one or two years. I am not positive about that. I think Mr. Hoyt was secretary first. I do not know how long Mr. Sheadle was secretary. It might have been a year or two, might have been more.

Mr. SHAULL: I now desire to have this appear upon the record. I ask you, Mr. Hoyt, to produce the books of the Iron Cliffs Co., which are now in your possession and called for by the subpœna marked Complainants' Exhibit A1 attached to this deposition.

681 Mr. HOYT: In reply to the request of counsel, Mr. Hoyt desires to say: First, that the books of the Iron Cliffs Co. mentioned in the subpœna, are not in his possession; and, second, that if they were, he recognizes no authority under the statutes of Ohio to compel the production of such record books under a subpœna to take testimony before a notary public, issued by a notary public in a cause pending without the limits of the State of Ohio; and, third, that the subpœna called for the production of books, without limiting the use, in any way, which was to be made of the books, and those books cover matters relating to the private business of the company in no wise affecting or touching the controversy between the parties to the suit or the issues made up by the pleadings in this suit; and therefore the request is not a competent request.

Mr. SHAULL: You then refuse to produce the books?

Mr. HOYT: I refuse to produce them, yes, sir.

Mr. SHAULL: I now desire this to appear upon the record.

The NOTARY: Mr. Morse, you will produce the books mentioned in the *subpœna duces tecum* with which you were served in this matter, at two o'clock this afternoon.

The WITNESS: Did you ask me if I would do so?

The NOTARY: I say, you will please produce those books mentioned in the *subpœna duces tecum*, with which you were served, here at two o'clock, to be used in taking this deposition.

The WITNESS: I will do so, if I can, yes, sir.

Mr. HOYT: If you are advised by counsel that it is proper.

Mr. SHAULL: I now ask Mr. Hoyt if he has the books of the Pioneer Iron Co., so-called, in his possession, or in the possession of the firms of which he is a member?

Mr. HOYT: No, sir.

682 The witness continues:

I don't know where the books of the Pioneer Iron Co. are at present. When I last knew of their location they were in the office of the company. It has been the custom of the people who have had charge of those books to keep them in the office of the Iron Cliffs Co.

Objected to by defendants as incompetent.

Q. Do you know any reason why they should be in any other place than that, unless there is an effort to prevent our obtaining possession of them in this litigation?

Objected to by the defendants as incompetent and improper in form.

A. I know of no reason why the account books should not be kept there, but the record books—a change of secretary made it necessary for the books to be changed to the office of the secretary.

That office (Mr. Hale's) is in the American Trust building. I cannot say whether or not those books are now in his office in the American Trust building.

Cross-examination by Mr. HOYT:

The office of the Pioneer Co. has been in the same office as that of the Iron Cliffs Co. in Cleveland. When I ceased to be secretary of the Pioneer Iron Co. and my successor was elected, the record books were delivered up to the new secretary.

Re-direct examination by Mr. SHAULL:

I did not bring the books of the Iron Cliffs Co. into court with me this afternoon. I requested of the attorneys to deliver me the books, for the purpose of bringing them here, which they declined, on the ground that I was not obliged to bring them here under that subpœna.

683 The present auditor of the Iron Cliffs Co. is R. C. Mann. His full name is Robert C. Mann. He is the man spoken of by me who took these books and delivered them to the firm of Hoyt, Dustin & Kelley.

Re-cross-examination by Mr. HOYT:

Q. You may state again, Mr. Morse, on the record here, why it is that you have declined to produce the books mentioned in the subpœna in court this afternoon under the subpœna.

Question objected to because it has already appeared.

A. I made a demand upon the attorneys for the books, which they declined for the reason, as they said, that I was not obliged to produce the books upon that subpœna.

Re-direct examination by Mr. SHAULL:

When I say I made a demand upon the attorneys I refer to the firm of Hoyt, Dustin & Kelley.

Counsel for complainants requested that Complainants' Exhibit A-2 be made a part of and attached to and returned with the certificate of the officer before whom said deposition was taken, for the purpose of showing the diligence used by the complainants in their attempt to procure the attendance of William G. Mather at the time and place mentioned in the said notice and stipulation hereto attached for that purpose.

Said Complainants' Exhibit A-2 is a subpœna in due form addressed to William G. Mather and Fred. A. Morse, commanding them to appear before A. W. Barber, a notary public for the county of Cuyahoga and State of Ohio, at his office in the city of Cleveland, on the third day of December, A. D. 1900, and to bring with them all the books of the Iron Cliffs Co. under their control, show-

684 ing the proceedings of the stockholders and directors of said company from January 1, 1866, to December 1, 1900, and then and there to give testimony in this cause.

Said subpœna has indorsed thereon a return, showing service upon Fred A. Morse, and showing that William G. Mather was not found within the jurisdiction of the officer making the return.

Mr. HOYT: Counsel for W. G. Mather referring to the last part of the return of the officer, and also in reply to statement made by solicitor of the complainants, says professionally, that some two weeks prior to the date of the stipulation referred to, and long prior to the service of any notice to take his or any other deposition in Cleveland in this matter, Mr. W. G Mather left the city and State, and has not yet returned, and has received no notice, directly or indirectly, of any subpœna, of any kind, nature or description having been issued in this cause for him.

Mr. SHAULL: I move to strike out the statement as incompetent.

The deposition of Edward C. Hungerford, taken in this cause before William L. Bates, a notary public, at his office, in Chester, Middlesex county, Conn., on Monday, November 26th, 1900, pursuant to stipulation between counsel for the respective parties in this cause.

EDWARD C. HUNGERFORD, sworn on the part of the complainants, testified as follows:

Direct examination by Mr. SHAULL.

My name is Edward C. Hungerford. I reside at Chester; age, 73 years; occupation, treasurer of the Chester savings bank. I went to New York April 16, 1857, and met C. T. Harvey, and the next day, the 17th, I went to work preparing a list of hardware needed
685 for the company. On the 18th I met C. T. Harvey and attended a meeting of the Pioneer Iron Co. in the afternoon. I was formally appointed as agent at a salary of $1,200 and my expenses in full. C. T. Harvey employed me for the company. He was then vice president of the company. L. T. Merrill was appointed secretary and treasurer, at a salary of $300 per year. At this time, probably at this meeting, it was decided to build a furnace with two stacks.

I remained in the employ of the Pioneer Co. until July, 1859.

Q. Was there ever any intention on the part of the company, or talk on the part of the company, or anybody else, of building more than one furnace?

Objected to by Mr. Hayden as incompetent and immaterial.

A. I do not remember hearing any talk of building any other furnace for that company.

I went to Marquette. Mr. Harvey and I engaged L. D. Harvey and S. G. Gay to build the stacks for the Pioneer Iron Co. at a salary of $1,200 for Gay and $1,000 for Harvey.

Q. Did you then proceed to Marquette?

A. I went to New York—Gay went with me to Poughkeepsie and looked over the iron works there where they had a large double stack furnace. From there we went to New York, met C. T. Harvey and bought a long bill of hardware of J. C. Tucker & Co. for the company.

Objected to by Mr. Hayden as irrelevant and immaterial.

May 4th and 5th we made a bargain with the Cold Spring people for engine and blowing machinery.

I was employed to be the financial agent of the company, and arrived in Marquette June 3, 1857. I had employed a gang of
686 men, who arrived the same day. June 5, 1857, we looked over the site of the furnace and determined on it. The gang then built a house for us to live in. We then began actual work on

the furnace. I cannot say certainly on what date. July 1st C. T. Harvey and Mr. Peck were up. We found all right, the excavations nearly finished and the railroad done.

Q. The excavations for the furnace?

A. Yes, we searched for stone for building in different places and opened the quarry June 22nd, 1857, about twelve or fifteen hundred feet north of the furnace.

That was the only furnace the Pioneer Co. ever built, as far as I knew. That was located on the east side of the railroad in sec. 6, in Negaunee. I am now talking of the furnace that is located at Negaunee.

We used the stone from that quarry for building purposes about the works and stacks. By July 1st we had a tram-road ready to carry the stone from the quarry to the furnace site. I cannot say with any certainty how many men I had employed there July 1st, 1857, in excavating and in construction of the furnace. I suppose from 30 to 50. They continued with me during July, August and the first seventeen days of September. I worked all the men in the quarry and on the furnace that I could work there with safety.

As to the state of forwardness of the furnace on the 17th of September, 1857, we had put in timber foundations and plank on top of that. The foundation was all in and a good part of the stone work was in, but I am unable to tell with any certainty how much of the work may have been done, but we had a large force of men working at that time. I am unable to tell when I placed the machinery in the furnace, but it could not have been until pretty near the first of October. The engine and blowing cylinder were what we needed most. They were put on board a vessel at Buf-
687 falo, August 29th. I do not know just when they got to Marquette.

The foundation of the furnace was built on soft ground. To secure the foundation we put in timber, and dug down to where the water was and put in timbers and three-inch plank on top of these and commenced the stone foundation on top of the plank. When I say I had the foundation all in and the foundation for the machinery and stonework pretty well along on the 17th of September, I mean the foundation of timber work and the stone foundation as near as it could be done. It is hard to tell whether or not the walls of the furnace were pretty well along. The bottom of the stacks are built in four columns. They were pretty well along. I could not tell just how far along the stone work on the stacks had gotten.

Objected to by Mr. Hayden as incompetent and immaterial.

I have no doubt that the foundations were in, and work on the foundations begun on that day. It was a charcoal furnace that we were erecting. As far as I know there was never any talk of any other kind of fuel being used in that furnace. The capacity of the furnace was designed to be about 10 to 15 tons per day for each stack. It was constructed with a view to using charcoal.

Objected to by Mr. Hayden as immaterial.

Nothing was done or any other changes made without the direction or sanction of C. T. Harvey. We had no other general representative in the Lake Superior country. I was quite well acquainted with L. D. Harvey. He was general foreman. The date of his arrival in Marquette was June 4th, 1857.

I remember in a general way the explorations that were made on the hillside facing the furnace to the south of section 7.
688 There was some lean ore found on the surface in that particular place. I presume we supposed the Jackson formation extended that way. I am unable to say who directed these explorations for the company at that time. L. D. Harvey had something to do with going there and setting men to work, and my impression is that a Mr. Eddy did some of that work. He had other men, too, with him; I am positive of that.

In these explorations the company found lean ore, which I suppose would give 35 to 40 per cent. of iron. They abandoned the explorations because L. D. Harvey and the furnacemen said it was not good enough to be used.

Objected to by Mr. Hayden as incompetent and immaterial.

Q. Did you know of any other deposits on the land covered by the so-called ninety-nine year lease?

A. None, except what I have explained in section seven. I am not certain just what the ninety-nine year lease, so-called, did cover. I have forgotten.

Mr. Eddy's initials are Norman E. We filled the stack of the furnace with charcoal and fired it March 9th, 1858. The dates to which I have been testifying are recorded in my diary which I carried in my pocket at the time. My habit was to record them daily.

The sketch you show me is a drawing by me, and shows the furnace and buildings. I have the respective names of the parties occupying the first houses near the places indicated as the sites of the houses. I have designated the location of the quarry from which the stone came. I believe the diagram is correct according to my recollection.

Counsel for the complainants thereupon requested that the map be marked Complainants' Exhibit 1.

Received in evidence and returned with the deposition as a part thereof and accompanies this record, marked "Hungerford map."

689 Objected to by Mr. Hayden as incompetent and immaterial.

Cross-examination by Mr. HAYDEN:

The first ore used in the furnace came from the Jackson Co.'s mine. We paid, I believe, $1 per ton of iron made.

Q. Was the ore you bought then called chips?

A. Yes; as far as it was good we used chips.
Q. Was not $1 per ton for ore very low at that time?
A. I do not remember what they were selling their ore for.
I do not know what the cost of mining ore was at that time. I presume I did and have forgotten. I do not know what L. D. Harvey or C. T. Harvey figured would be the cost of mining ore from section 7. I have no way of knowing how long the explorations continued on section 7.
I do not know what work was done in the way of explorations after my leaving in 1859. Probably I did know at the time, because I was surveying and exploring for others there. I do not remember now anything about it.
I understood Mr. C. T. Harvey was the promoter of this Pioneer Iron Co. I suppose he got up the company and placed its capital stock among various parties and found money for carrying on operations.

Objected to by Mr. Shaull until it appears in the evidence that he has knowledge himself or information derived from others.

I had a prospectus, but it is not here. Such was the fact; the way I understood it. He became vice president at the first meeting of the company and remained as long as I was there the only officer of the company in Marquette county. I do not remember any other man coming there only to visit. Besides being vice president, Mr. Harvey was also the general manager having entire charge
690 of the business. Everything I did was under his direction. He directed what should be done.

Re-direct examination by Mr. SHAULL:

I do not remember that there was any ore used in the furnace of the Pioneer Iron Co. besides that obtained from the Jackson Iron Co.'s location, and I do not think there was. I cannot tell exactly how long before I was employed by the company that I heard of their contemplated organization, but it was some months.
Q. Did you ever know or hear of their having any other furnace or lands or manufactory for the production of iron ore except those indicated on the map marked Complainants' Exhibit 1?
A. I do not know—well, there was said to have been something done by Duncan towards starting a forge on Carp river, but I do not know whether it was on Pioneer land or not, but I do not think it was. It was only a matter of report and I was told that a blowing cylinder and perhaps other machinery had been hauled to a place on Carp river by Duncan and the question had been raised as to whether that cylinder would answer for a furnace use, but it was decided that it was no good. I do not know whether any buildings were at that place, but took it for granted that they had been burned if there had been any. I understood there was an old forge started

there. We talked about using the blowing cylinder, but found it was no good.

Q. Was this the only manufactory which the company ever had at any time as far as you know?

Objected to by Mr. Hayden as incompetent and immaterial.

A. Yes.

691 I think I should have known had they contemplated any other at any other time during my employment. My connection with C. T. Harvey was very confidential in all matters of business.

Re-cross-examination by Mr. HAYDEN:

I am unable to say with any certainty how many times before the first meeting of the Pioneer Iron Co. at New York in April, 1857, I heard that the organization of such company was in view. We talked of the completion of the organization, but it was impossible to tell anything about the length of time. I suppose that as soon as we got the company fully organized and the stock placed it would begin operations. From my best recollection of my personal and confidential relations that is true.

By Mr. SHAULL: We will offer for identification and to have marked Complainants' Exhibit 2, a pamphlet purporting to be a report of the directors to the stockholders of the Pioneer Iron Company at a special meeting February 25th, 1864. (Pamphlet shown witness.)

Question by Mr. SHAULL: Is this pamphlet the report of the directors to the stockholders of the Pioneer Iron Co.?

A. I suppose so, and I had it all these years.

Q. And you have every reason to believe it is what it purports to be, have you?

A. Yes, I have no doubt of that.

By Mr. SHAULL: I now offer it in evidence to be attached to the deposition of the witness and made a part thereof and returned therewith.

Said paper marked Complainants' Exhibit 2, and returned with this deposition. The following is an abstract of the circular:

692 *Abstract of Circular.*

Feb. 25, 1864, the directors of the Pioneer Iron Company submitted a report to the stockholders, reviewing the operations of the company from the date of its organization in 1857.

The report, among other things, states in substance that Charles T. Harvey, a member of the board, who had up to September, 1859,

acted officially and solely as such in common with other directors, proposed to supply the works with fuel as a contractor at a rate which he claimed was fully 50 per cent. less than it was costing under the irresponsible agency system.

That Messrs. E. and T. Fairbanks & Co., of Johnsbury, Vt., tendered their guarantee for Mr. Harvey's faithful performance of the undertaking.

At this juncture, when a suspension and an eventual winding up of the enterprise seemed inevitable, the directors accepted Harvey's proposition and on Feb. 7, 1860, placed the works and employés of the company under Harvey's control as managing director.

The report mentions that, under Harvey's administration, certain changes were made the renovation of the works undertaken and sundry alterations and repairs had been made which were authorized by Harvey. The report shows in detail the work done under Harvey's supervision, under whose management the cost of manufacturing pig iron had been greatly reduced, leaving a margin of 47 per cent. to change the result of profit and loss account; "and from that date to the present time the works have yielded a profit on all metal produced, except at one period of a few months during the stagnation of business on the first outbreak of the rebellion in 1861, when Mr. Harvey was forced to sell metal delivered in Chicago, at rates netting less than $20.00 per ton there, and considerable quantities lay over until the following year for want of purchasers."

In January, 1861, the directors, by resolution, requested Mr. Harvey to take control of the works and its products; that Harvey acted afterwards as trustee, selling the iron and applying proceeds in part to paying the claims by which a foreclosure of the mortgage was prevented.

The report shows that in September and October, 1862, the committee of the board visited the works representing at the same
693 time the mortgage interest of the indorsers. The company then had in view the obtaining of all necessary funds and arranged with Harvey to withdraw as contractor for fuel and as trustees, the company taking Harvey's investments in coal kilns, etc. The committee reported to the board of directors the arrangement made with Harvey, which was duly approved, and by a unanimous vote, the board tendered the thanks of the company to Harvey for the skill and energy with which he had served the company in the critical period of 1860 and in the gloomy time intervening until the better days, long hoped for in vain, had dawned upon the prostrate iron interests of Lake Superior.

The report sets forth Harvey's general account, showing net profits of the business in 1861 and 1862, to be $18,039.32. The report shows that the gross debts of the company had been reduced from about $100,000 in 1860, to $70,000 in 1863, and interest paid up to date in addition to improvements and coal kilns amounting to $20,000 more.

The deposition of Charles J. Canda, of the city of New York, State of New York, a witness produced in behalf of the complainants, and then sworn and examined in behalf of the defendants, taken before Alphonse Kloh, notary public, on the 24th day of November, 1900, at the office of the said witness, No. 11 Pine street, of the city of New York, by virtue of a stipulation, signed by the parties by their respective solicitors in this cause.

CHARLES J. CANDA, sworn on the part of the defendants, testified as follows:

Direct examination by Mr. HAYDEN:

My name is Charles J. Canda. Residence, New York city. Occupation, is interested in corporations. Age, 62. I was an officer at one time in the Iron Cliffs Co. and of the Pioneer Iron Co., Michigan corporations. The business with these companies was conducted at Negaunee and at Ishpeming, in the county of Marquette,
694 Michigan. I was connected with the Iron Cliffs Co. about twenty-four years, and with the Pioneer Co. after the Iron Cliffs Co. acquired control of it. I was secretary and treasurer of both companies, and at one time a director of both, I think. My connection with these companies extended down to 1890.

I have a recollection of what was called the Pioneer 99 year lease.

Q. Whether or not the Pioneer Company, or yourself as an officer of the Pioneer Company, had in mind during the years prior to 1890 the existence of the 99 year lease, and took it into consideration as an asset of the company?

Objected to as leading, incompetent and irrelevant, and calling for a conclusion of the witness based upon premises not known.

A. Yes.

Q. Will you state generally whether or not the Pioneer Company did business, more or less, during the years up to 1890, while you were connected with the company after the Iron Cliffs Company had acquired a controlling interest in its stock?

Objected to as calling for a conclusion of the witness, and as incompetent.

A. It did.

I knew as a matter of fact, being secretary and treasurer of the Pioneer Iron Company during that time, that it did more or less business. The question came up with reference to conveying all the Pioneer Company's real estate and personal property to the Iron Cliffs Company so as to have one title, and it was concluded not to make this transfer because it would do away with this lease which the company considered valuable. The Pioneer Company did all

the business that was necessary to protect the property, and to protect its corporate existence.

Mr. SHAULL: I move to strike out the answer as not responsive and as a conclusion of law.

695 As I remember it, the Pioneer Company held meetings of its stockholders and elected officers every year. It did some exploration also.

Mr. SHAULL: I move to strike that out, on the ground that it is a conclusion rather than a fact.

Mr. HAYDEN: Have you any recollection as to defendants doing some mining to a small extent on what was called Pioneer mine on the lands of the Pioneer Company?

Objected to upon the ground that it is leading.

A. It did very little mining, for it did not find much ore.

Q. As I understood you, it did some mining?

Same objection.

A. To the extent stated.

The Pioneer Iron Company had a general manager from 1880 to 1890, Alexander Maitland.

Cross-examination by Mr. SHAULL:

I think I had a set of books for the Iron Cliffs Co. in Negaunee, in which all the working and running expenses of that concern were kept. We had an office in New York, in which we held our board meetings, and there we kept a set of books simply showing the expenses of the New York office. The books of both companies were kept in Negaunee. Such books were connected with the working expenses. All the books and accounts were kept at Negaunee at the office of the Iron Cliffs Company. All the remittances for ore and products sold were made to me as treasurer, and we kept of course an account of that here and paid their drafts, which were made as they required funds. We sent a detailed statement of our expenses to Negaunee every month, not only the office expenses, but everything that we did with reference to the Iron Cliffs Company.

696 And they had a complete record of every note that we received or every remittance that we received.

The general manager had charge of the books at Negaunee. I know Mr. Mahlon A. Gibbs. He was a clerk at Negaunee. I presume he kept the books. I could not answer that because I did not go into that detail at all.

I did not have occasion to examine those books at Negaunee. Statements came in of the résumé of the business. I may have, when at Negaunee, looked over the method of keeping the books, but never examined them in detail or verified them in any way

Q. You said in your direct examination that the question came up as to the advisability of conveying the property of the Pioneer Iron Company to the Iron Cliffs Company and that the reason you did not so convey it was because you were afraid you would thereby lose the 99 year lease, so-called?

A. I did.

Q. When was it that the question came up?

A. It is a long while to remember, but I think it was at the time we made a mortgage, when the first mortgage was made to the Iron Cliffs Co.

This paper you show me purports to be a copy of a third mortgage, which, referring to the first mortgage, fixes the date as 1867.

I cannot fix the date when the Pioneer Company did the mining or exploring to which I have referred in my direct examination. I do not know where the ore was used which came from the so-called Pioneer mine.

Q. Is it not possible, Mr. Canda, that the mining referred to by you might have been done by the Iron Cliffs Company and so charged on the books of your corporation?

A. I could not answer that question, because I have not
697 seen the books. The books will speak for themselves. I don't know anything about it.

Q. So that if the books did show that the mining or exploratory work was done by the Iron Cliffs Company you would then say that it, instead of the Pioneer Company, did the work?

Objected to on the ground that it has been so long since Mr. Canda saw the books that he cannot tell except from indistinct recollection, and that the question asked is only as to what the books contain, which books Mr. Canda has not before him.

A. Not necessarily; it might have been done by the Iron Cliffs Company by direction of the Pioneer Company.

Q. If that were so, it would appear on the books of the Pioneer Company instead of the Iron Cliffs Company, would it not?

A. I do not know how they kept the books up there.

Q. Is it not true, Mr. Canda, that it has been a long time since this happened, and your attention was not particularly called to it and you have no distinct recollection about it?

A. I have no distinct memory of that.

My recollection is not a strong one, excepting that I know that we desired to find ore on those lands, particularly when we had a contention with the Jackson Iron Company with reference to getting ore from them.

Q. Is it not also true that the Iron Cliffs Co. had a lease of all those lands and the right to take the ore from them, which it got in 1866 or 1867 from the Pioneer Co.

Objected to as incompetent, because the best evidence is the lease

itself, if there was any such. The recollection of the witness
698 as to such a paper, unless his attention was specially called to it by circumstances to make his recollection perfect, would be incompetent evidence.

Q. I will alter that question—Mr. Hayden's objection might have a little force—that lease also contained a provision that you should have the furnaces of the Pioneer Company for the purposes of smelting iron ore, and the right to cut wood from the Pioneer lands for charcoal to be used in those furnaces; and the lease runs at first for the space of ten years?

A. I became an officer of the Iron Cliffs Company in the fall of 1866, and I do not remember that lease.

Redirect examination by Mr. HAYDEN:

Q. Mr. Canda, while you have no knowledge now of what the books show, the books kept at Negaunee, yet I understand you to say that you do know that the Pioneer Company did business owing to its desire to find ore and also to exercise its rights under the 99 year lease?

Objected to on the ground that it calls for a conclusion of the witness on premises not known.

Q. I do not understand that your testimony relating to the books at Negaunee, as to which you have no knowledge in any way, is intended to control or subtract from your testimony that you have already given that the Pioneer Company did something.

Objected to as instructing the witness and leading.

Q. What is the truth as to that?

A. As the executive officer of the company here, I desired and intended to have everything done that was necessary to be done to maintain the integrity of the Pioneer Iron Company.

Q. And was everything done to that end, so far as you know?

A. So far as I know, yes.

699 Mr. SHAULL: I move to strike out the last two answers.

Q. Did not the question of having the lands of the Pioneer Company conveyed to the Iron Cliffs Company come up only at the time this mortgage of 1874 was made, the time when the Iron Cliffs Company had acquired a control of the stock of the Pioneer Company?

Objected to, first, as leading, and, second, as assuming the testimony to show that the discussion as to conveying the Pioneer lands to the Iron Cliffs Company occurred in 1874, while the testimony shows it occurred in 1867.

A. I am not positive about it. I would not be at all surprised if it came up in 1874, when we made the larger mortgage. I cannot fix that date.

At that time the Iron Cliffs had acquired control of the Pioneer. Just when, I do not remember. We did not keep account books of the Pioneer Company in New York. We kept transfer books. The minute book was also kept there and meetings were held there. The accounts at Negaunee ought to show transactions of the Pioneer Company as well as the Iron Cliffs Company. I do not know whether they show them or not, but they ought to. Our method of keeping accounts here was substantially the same as an outside agent would have done, or a bank. We credited them with everything we received in one account, and charged them with everything we paid for their account, giving explanations in detail, so that they might enter them on their books.

Re-cross examination by Mr. SHAULL:

The detailed working account would not come here; merely a résumé of the inventory at the end of the year. I surrendered the books of transfer and minute books of the Pioneer Iron Com-
700 pany to Mr. Mather of Cleveland, Ohio, in 1890. They were sent to him at Cleveland. The stock transfer book would show when the transfer to the Iron Cliffs Co. was made. The dates would be accurately inscribed, but it might not necessarily show when it was acquired. The cash books or accounts that were sent from here would show when they were acquired. As you are doubtless aware, stocks are often acquired with the necessary irrevocable power of attorney, to transfer them at convenience. The transfer might be made at any time later. The cash book, or rather accounts, that were sent from New York, would show the date.

Q. Was there any change so far as you know in the number of shares held by the Iron Cliffs Company in the Pioneer Iron Company in the name of Abram S. Hewitt, trustee, between the time that mortgage was given and the time you sold out to the Pioneer to the Cleveland parties, if you know?

A. I cannot remember how that was taken back. Of course, they transferred it back so that the company could use it. It may have been left in their hands and it may not.

Q. But the question is, did not the Iron Cliffs retain exactly the same interest in the stock of the Pioneer Iron Company from the time it pledged that stock in the mortgage given to Edmund H. Miller and Abram S. Hewitt, up to the time that you New York people disposed of your interest in the Iron Cliffs?

A. Yes, we retained the same interest.

The deposition of Charles J. Canda, taken before Alphonse Kloh, notary public, in and for New York county, on the 21st day of February, 1901.

CHARLES J. CANDA, sworn on the part of the complainants, testified as follows:

701 Direct examination by Mr. ELDREDGE:

In October, 1889, I was a director of the Iron Cliffs Company and the Pioneer Iron Company. I was secretary and treasurer of the Iron Cliffs Company and I was probably secretary and treasurer of the Pioneer Iron Company. I cannot now remember with certainty.

Q. In the articles for the reorganization of the Pioneer Iron Company, John Abele, Alexander Maitland, C. J. Canda, George M. Miller, H. Groenemeyer, Frederick Hudson and Abram S. Hewitt are named as stockholders. Who was Mr. Abele?

A. Mr. John Abele was the president of the Iron Cliffs Company. Alexander Maitland was a director of the Iron Cliffs Company. I do not remember whether George M. Miller was a director of the Iron Cliffs Company at that time or not. I cannot remember at the moment whether or not he was at one time a director. The estate of his father was a stockholder. Mr. Groenemeyer was a clerk in my office here. He was my clerk. The Iron Cliffs Company never paid him any salary. He worked under my direction for the Iron Cliffs Company. Frederick Hudson was also my clerk. Abram S. Hewitt is the partner of Cooper, Hewitt & Co. He has at different periods been a director of the Iron Cliffs Company but not consecutively.

Q. In the articles of association for the reorganization of the Pioneer Iron Company, John H. Abeel was stated to be the owner of ten shares, who, as a matter of fact, was the owner of the ten shares?

A. The ten shares were given to M. Abeel to qualify him as a director.

The same is true about the ten shares in the name of Alex-
702 ander Maitland, Charles J. Canda, George M. Miller, H. Groenemeyer and Frederick Hudson. The shares that stood in the name of Abram S. Hewitt as surviving trustee were delivered over to Mr. Hewitt as collateral to a mortgage made by the Iron Cliffs Company. Some of them may have been delivered previously, but they applied to that mortgage.

As I remember, they were the shares of stock that are mentioned in the mortgage of September 10, 1874. The mortgage will answer that question. The 4,930 shares in the name of Abram S. Hewitt, surviving trustee, belong to the Iron Cliffs Company.

I cannot tell when the bonds were paid which were secured by the mortgage dated the 10th of September, 1874, executed by the Iron Cliffs Company as party of the first part to Edmund H.

Miller and Abram S. Hewitt as trustees, of the second part, recorded on the 22nd day of September, 1874, at 8:34 o'clock a. m. in the registry of deeds for the county of Marquette, Mich.; which mortgage recites that the bonds should become due on the 10th day of September, 1884, but that, at the option of the Iron Cliffs Company they might be extended for a further period of five years, or until September 10, 1889. I think some bonds were paid before others, but they were all paid as I remember it at the time of their maturity, or before. They were all paid on or before the 10th day of September, 1889. I should say that they were extended for five years at a lower rate of interest. They were all paid at the end of the extension period, September 10, 1889, as I remember. (The attorney for the defendants objected to each and every question as incompetent and irrelevant, it being stipulated by counsel that this objection, instead of appearing with each question severally during the taking of the deposition, be entered at the end of the said deposition.)

703 The deposition of Lorenzo D. Harvey, taken before Alice J. Riley, notary public in and for Marquette county, on the 24th day of September, 1900.

LORENZO D. HARVEY, sworn on the part of the complainants, testified as follows:

My name is Lorenzo D. Harvey; age, 69; residence, Harvey, Marquette county, Mich. I have lived in Marquette county since 1857. I am acquainted with Charles T. Harvey. Prior to the spring of 1857 I lived in Berkshire county, Mass. I came here in 1857 to erect the Pioneer Iron Company furnace at Negaunee, through Charles T. Harvey and E. C. Hungerford, who was superintendent. I erected the furnace. It was a two-stack furnace; capacity supposed to be 10 tons a day; each stack made 10 tons of ore.

We commenced manufacturing iron about March, 1858, obtaining our ore from the Jackson Iron Company mine. It was chips from the ore. That was the contract.

Q. Did you have a contract with the Jackson Iron Company?

Mr. HAYDEN: I object to that question.

A. I never saw it, but was told that they had a contract with the iron company for years.

We started in with chips from the mine. By that I mean the ore that they didn't ship. They shipped nothing but what they could handle, and we took the loose ore. We used the hematite after about a month and a half.

Mr. Hungerford was the superintendent of the concern. I remained connected with the furnace until the spring of 1859. A man by the name of Spillman came there after I left. He was gen-

eral agent. I know a man by the name of Norman B. Eddy. He was in the employ of Charles T. Harvey and E. C. Hungerford of the Pioneer Iron Company.

704 Norman B. Eddy did a little exploring south of the furnace for ore. At that time he was in the employ of the Pioneer Iron Company. I never saw but two pits that he opened. Mr. Harvey did not make any explorations himself, only through Mr. Eddy. It was supposed to be on the Pioneer land, so far as I know. I wish to be understood that I don't understand the section lines very well, but it is right south of the furnace. After I left the employ of the company I went to what is called the Chocolay, to build the Northern Iron Company furnace.

After leaving there I was called back once to the Pioneer furnace by I. B. Case. He was running the furnace the first two years, I think, under Harvey's administration. After that he took the iron by the ton to make.

Q. For what purpose were you called there?

Mr. HAYDEN: I object to the testimony on the ground that it is irrelevant and incompetent.

A. He had been exploring and was down deeper than Eddy went, and he struck some ore, but that he didn't know it would pay to use.

Up to that time we had not found any ore that would pay to use. I examined the ore taken from the deeper pits.

Q. Did the officers of the company consult with you about it, about the quality of the ore?

Mr. HAYDEN: I object to the question as indefinite, irrelevant and incompetent.

A. Only I. B. B. Case.

After I had been up there I talked with Charles T. Harvey about it.

Mr. HAYDEN: Same objection.

I did not have any conversation with him more than he asked me what I thought.

Q. What did he say?

705 Mr. HAYDEN: Objected to as incompetent and irrelevant.

A. The idea was that I wouldn't furnish coal at 12½ cents a bushel to make iron. I didn't think it would pay.

Q. State whether the work of exploring for minerals was abandoned at that time?

Mr. HAYDEN: That question is objected to as incompetent and irrelevant.

A. It was, so far as I know.

I could not tell you how long since iron was made in that furnace.

Cross-examination by Mr. HAYDEN:

I never saw the chemical analysis of the ore which Mr. Case found, which I thought wouldn't pay to work with coal at 12½ cents a bushel. I should say about thirty-five. I do not know whether it was ever analyzed. I guess at the analysis. I have not been an iron miner or manufacturer in this county, then or at any time except with the Pioneer Co. from 1857 to 1859. The Jackson Iron Company's ores were 25 per cent. ahead of the ore that Case found. I judged that merely by the appearance of the ore.

Eddy was a landlooker for Mr. Harvey, besides doing business for the company. Charles T. Harvey had other business besides the company's business, because he had charge of all the Sault Ste. Mary Canal Company's lands.

The deposition of Charles T. Harvey, of Ottawa, Ontario, Canada, taken before James A. Farrell, notary public in and for the county of Cuyahoga and State of Ohio, on the 16th day of February, A. D. 1901.

CHARLES T. HARVEY, sworn on the part of the defendants, testified as follows:

706 Direct examination by Mr. HAYDEN:

I assisted in the organization of the Pioneer Iron Company.

Q. In the bill of complaint of these complainants it is set up that, on the 26th day of February, 1857, James L. Reynolds, for a valuable consideration, deeded to you (Charles T. Harvey) certain lands in Marquette county, in a conveyance, a copy of which is annexed to the bill and marked Exhibit A, attached to which form of deed is a memorandum of agreement, in which Reynolds reserved to himself an interest in the ores in the lands conveyed to you in the deed. Are you the Charles T. Harvey who received the conveyance?

A. I am.

Q. Attached to the same bill of complaint in this case is an exhibit called Exhibit C, which is a memorandum of a lease and grant made September 15, 1857, by Charles T. Harvey to the Pioneer Iron Co. for 99 years, of certain lands therein mentioned, for the mining of iron ore to be manufactured in Marquette county, etc. It is called the "99-year lease." Are you the Charles T. Harvey who made that grant?

A. I am.

Q. Will you state whether or not this 99-year lease was any part of the transaction by which you also granted to the Pioneer Iron Co. by deed, in the month of April, 1857, certain other lands in consideration of $25,000?

A. Yes, it was in pursuance of an agreement arrived at at the

time of the deed. It was carrying out the understandings and agreements, whether expressed in writing or understood between us from conversation—intended to be a sort of completion of the original agreement.

707 Q. Whether or not the consideration of $25,000 applied equally to this 99 year lease and the deed?

A. Well, I should hardly say that the $25,000 applied equally to the lease——

Thereupon Mr. Hayden stated that he desired to have the question withdrawn, to which counsel for complainants object, because it is one that has been asked and answered.

Q. I don't mean, in my question, Mr. Harvey, as to whether or not exactly one-half of the $25,000 covered the 99 year lease and the other half the deed, which would be equally, but I mean whether or not the $25,000 consideration expressed in that deed covered also the 99 year lease. Whether or not they were part and parcel of the same transaction?

Objected to by complainants as leading.

A. My reply would be that the $25,000 was primarily in consideration of the purchase of the lands, but that the lease, the understanding that there should be a lease given, was included, but I could hardly say that the $25,000 was the consideration for the lease.

Q. Whether or not the lease was given in pursuance of the understanding on account of which the $25,000 was paid.

A. Well, a part of that transaction.

Q. A part of that transaction?

A. Yes.

Q. The deed you refer to given to the Pioneer Iron Company which, as you say, was a part of this same transaction as the 99 year lease, is a deed in consideration of $25,000 given, I think, on the 22nd day of April, 1857, at any rate during that year, you understand that, do you?

A. Yes, sir.

Q. As the same——

708 A. The deed referred to.

Cross-examination by Mr. SHAULL:

I lived in Marquette in 1857. That is to say, I spent my summers there. The paper pamphlet you show me I recognize as a document put forth by the Pioneer Iron Company in 1857. It was in the nature of a prospectus to set forth the objects of the company and the general plan of the corporation. I had to do with the preparation of it. I assume that it was sent to all the stockholders or officers. It was intended that it should be.

Q. In this prospectus referred to, you say: "The confidence enter-

tained in these conclusions by the directors had led them to become identified with this particular enterprise. It is their intention to confine expenditures of the company to the least amount necessary to enter upon the production of the single staple of pig iron in the best manner and to bring the business to the paying point in the shortest possible time. When this desideratum has been gained, the directors believe that the stockholders will prefer that the business of the company should be limited by its capital and dividends thereon declared, as often as may be, rather than to attempt, in the event of success, an undue enlargement of operations and the consequent result of a diminution in the percentage of return, the reverse of this policy having been heretofore prolific of disaster to iron concerns in this country. The business policy of the company having been thus intimated, the main items of its manufacturing facilities and resources will be briefly recapitulated."

You may state, if you know, whether that was the policy and purpose of your company, as just outlined by me in the portion of this pamphlet I have read?

Mr. HAYDEN: I object to the reading into the testimony
709 of this pamphlet, and I object to the question and the answer thereto because it is irrelevant; also, as I understand it, because the other gentlemen composing the Pioneer Iron Company at that time are dead.

A. It was so understood.

I don't recollect the year I finally severed connection with the Pioneer Iron Company. I should think it was about 1865. That policy continued to obtain up to the time I severed connection with the company.

Q. What was your relation to the Pioneer Iron Company during the time you had relations with it as a stockholder or officer or otherwise?

To which question counsel for defendants objected, for the reason that the question is irrelevant, and for the other reason above given.

By Mr. SHAULL: I will state that this examination is for the purpose of showing what connection there was, if any, between the matters referred to by Mr. Hayden on direct examination.

A. I believe I was the largest stockholder during those years. I was a director also, and without, possibly, having the official title, I was actual managing director of its operations in Marquette county. After a time I think I was made managing director. Just when I don't recollect. As such managing director or general agent no contracts were entered into in that vicinity except they were approved by me.

Q. Whether or not you passed upon all contracts that were entered into in that vicinity for the company and either rejected or accepted them for the company?

A. Emphatically, I did.

Q. Whether or not the company accepted the benefit of the contracts which you may have made for it from time to time and acted upon them?

To which question counsel for defendants objected for the reason that the same is immaterial.

710 A. Without any exception.

Q. I now show you a paper dated "Office of the Pioneer Iron Company, No. 187 Greenwich St., New York, September 26, 1859," and signed "John Neilson, secretary and treasurer," and ask you to look it over.

(Paper is handed to witness, who looks it over.)

Q. Do you recognize what that is?

A. Yes, sir.

It was in the nature of a circular sent out from the New York office by the treasurer to all the stockholders. (Witness examines paper carefully.) It undoubtedly sets forth the conditions of the company at that time.

Counsel for complainants thereupon offered the paper in evidence, and requested that it be attached to and returned with this deposition as a part thereof.

Mr. HAYDEN: I object to it as immaterial.

Said paper was marked Complainants' Exhibit A–1, and is as follows:

Office of the Pioneer Iron Company, No. 187 Greenwich street.

NEW YORK, *September* 26, 1859.

At a meeting of the stockholders of the Pioneer Iron Company, convened by special call, and held on Thursday, the 22nd instant, at this office (3980 shares, or nearly four-fifths of the capital stock being duly represented), the board of directors submitted a report and statement of the company's business up to the 1st instant, from which it appeared that the works are at length in full operation, and promising to realize henceforward the most favorable results; but that the cost of the two furnaces which it was thought most advantageous to erect (instead of one only as originally contemplated) together with other unexpected outlays, had increased the expenditure nearly $30,000 beyond the capital of the company; and compelled the directors to borrow money on their own responsibility to meet the deficiency, and furnish a temporary working capital,

711 until the stockholders could take action on the subject. The report concluded by urging the immediate necessity of providing for the amount of said loans, either by an increase of the capital stock, or by an issue of the company's bonds, as might be deemed most expedient, in order to relieve the directors from embarrassments which would otherwise compel a suspension of operations most disastrous to the interest and property of the stockholders.

After examination of the accounts and statements submitted with the report, and ample discussion of the present condition of the company and the prospect of successful results from its continued operations, the following preamble and resolutions were offered, and adopted by an unanimous vote, viz.:

"Whereas, it appears from the report of the board of directors, and the statement of the company's financial position presented therewith, that it is absolutely necessary to provide at once additional cash means to the amount of about seventy-five thousand dollars or to suspend the further operation of the company's works, and

"Whereas, the prospects of our future business are so favorable as to forbid the idea of suspension, and seem to require only temporary additional facilities to realize the successful results heretofore anticipated; therefore,

"*Resolved*, 1. That it is expedient to raise the sum of seventy-five thousand dollars by an issue of the company's bonds to that amount.

"*Resolved*, 2. That said bonds be issued in sums of five hundred dollars each, having five years to run, and bearing interest at the rate of eight per cent. per annum, payable semi-annually in this city; said bonds to be secured by a mortgage on the company's real and personal property now owned, or hereafter to be acquired; and said mortgage to be executed by the president and treasurer, on behalf and under the seal of the company, to three trustees, to be appointed for that purpose by the board of directors.

"*Resolved*, 3. That two-thirds of the entire net annual profits of the company be reserved, and applied from year to year, as long as may be necessary, to the redemption of said bonds, or any portion thereof, at or below par—and if said profits, or any part thereof, cannot be so applied, then the same to be deposited in the United States,
712 or other good trust company, at interest, until such time as they can be used for that purpose.

"*Resolved*, 4. That a copy of the foregoing preamble and resolutions be furnished to each stockholder, and his subscription requested for some portion of said bonds, for the reception of which the subscription list shall be kept open until the 15th day of October next, inclusive.

"*Resolved*, 5. That any portion of said bonds not taken by the stockholders on or before said 15th day of October next, may then be offered by the directors to other parties, at not less than the par value."

On motion, the meeting proceeded to the election of a board of directors, to serve till the next annual meeting—when all the members of the late board were re-elected by an unanimous vote.

At the suggestion of the president, the stockholders present were solicited to subscribe for their proportion of said bonds, which was immediately responded to by a subscription of one-half the amount required. It is earnestly desired and hoped by the directors that the whole of the bonds will be taken by the stockholders, to whose

interest the early realization of the amount will be of vital importance in relation to this winter's operations, and preparations necessary for a more vigorous prosecution of work in the ensuing spring.

On motion the meeting then adjourned—subject to the call of the board of directors, and due notice given.

By order,

JNO. NEILSON,
Secretary and Treasurer.

The witness continues:

I think I had a considerable amount of real estate in Marquette county at the time this deed was made from Mr. Reynolds to me in April, 1857. They were largely mineral lands and timber lands, suitable for charcoal making, to produce pig iron. All the lands I had at that time in those two townships came from Reynolds. I owned nothing else there previous to the Reynolds purchase. I was agent for a large amount of lands but not the owner.

713 I don't think I had lands outside of the lands specifically described in the 99-year lease. I may have had a contract for some land, or what is known as Chocolay township, but I don't think the deed passed to me until after that time.

Q. In the deeds spoken of by Mr. Hayden in the direct examination, mentioned in the bill of complaint in this case as Exhibit A, the following language appears.

By Mr. HAYDEN: Now this is the deed from James L. Reynolds? Exhibit A I understand?

By Mr. SHAULL: Yes, deed from Reynolds to you, the following language appears:

"Provided, and it is agreed, however, that the party of the second part, or his assigns, shall have the sole right, free of cost of compensation to the party of the first part, to mine for their own use or for manufacturing purposes, within the present limits of Marquette county, any mineral ores or marble found on any of the premises herein referred to, but shall have no right to sell, to other parties, for exportation as aforesaid, without accounting to the party of the first part for his joint half interest therein."

What was contemplated by you and Mr. Reynolds, and what did you desire to effectuate in inserting that kind of a clause in a deed?

By Mr. HAYDEN: I object to that question because it is an effort to affect the writing by oral testimony, which is incompetent. On the ground that the deed itself is the only evidence of the intention of the parties which is admissible, and the testimony is irrelevant. Also, on the ground that the other parties to this transaction are dead, as I understand it. I make the further objection that the language read by the counsel is not from the deed itself, but from the contract annexed to the deed, known as letter A. Finally it is manifestly incompetent for Mr. Harvey to state what the in-

714 tentions of the parties were unless they were put in the papers themselves, and what appears in the papers governs.

Q. (Question was then read to witness by stenographer.)

By Mr. SHAULL: I will add to the question. Was your purpose and contemplation such as was declared by you in an instrument made between you and Mr. James Reynolds, by his attorney in fact, William C. Reynolds, on the first day of February, 1871, and recorded in the office of the register of deeds of Marquette county, in Liber 1 of Miscellaneous Records at pages 304, 305, 306 and 307?

By Mr. HAYDEN: I renew to this question as changed, all my objections made to the other. I add the additional objection that the paper shown to the witness about which the question is now asked, was not a paper to which the Pioneer Iron Company was a party, and even if oral evidence was admissible to change the force and effect of a written instrument, and if none of the other objections apply, already made to the former question, the witness, James L. Reynolds could not make, in 1871, any kind of a stipulation in writing or otherwise, by way of definition or otherwise, that would bind the Pioneer Iron Company. Also, I make the further objection that the paper did not undertake to bind the Pioneer Iron Company unless it should consent.

Q. You may answer the question, was that your understanding and Mr. Reynolds', and did you intend what you afterward declared in 1871? Was that your understanding at that time?

A. Yes, it was.

Q. In the so-called leases from yourself to the Pioneer Iron Company, dated September 17, 1857, you used this language in substance: That you let, leased and demised to the party of the
715 first part, certain lands, describing them, situated in certain townships, "for the sole purpose of mining and quarrying, at its own expense, such ores and marbles as may be found therein, and subject to the provisions hereinafter mentioned, namely: provided it shall not quarry, mine or remove any ores on said lands except such as it shall actually convert into merchantable iron in its own furnace or forges." What furnace or forges did you have reference to when you used that language?

By Mr. HAYDEN: I object to the question for the numerous reasons before given to the previous two questions.

I had reference to the furnace that was then contemplated being built at Negaunee by the Pioneer Iron Company.

Q. Was not that furnace at that time in process of erection?

A. What was the date?

Q. September 17, 1857?

A. Oh, yes, it was erected. Yes, it was built.

Q. How many stacks was it?

A. Two.

Q. What capacity did they have?

Objected to by counsel for defendants, for the reason given before.

A. We estimated their capacity to be about 10 tons apiece, 10 tons each.

Q. Did you have, in contemplation, or did the Pioneer Iron Company have, in contemplation, in your talk with it, or did you, in those talks, contemplate that they would build any other or different or further furnaces than these erected in Negaunee in which to use this ore?

To which question counsel for defendants made the same objection as before.

A. It was not contemplated. Any others were not contemplated.

716 Q. Was it understood at the time the articles of incorporation of the Pioneer Iron Co. were executed, that it was to erect a furnace at Negaunee and manufacture iron there?

Objected to by counsel for defendants for the same reasons before set out in this deposition.

A. Yes. That was the only manufactory that it contemplated erecting. (Objected to by defendants.) It did not contemplate, that I know of, furnaces to manufacture iron ore at any other point than at Negaunee.

Objected to by counsel for defendants.

I would have known of it had the company ever contemplated the erection of any other furname during the time I was connected with it. (Same objection.) Charcoal was the fuel used in this furnace in Negaunee. It was not contemplated during the time I was connected with the company to erect any furnaces for the use of any other fuel than charcoal. (Objected to by defendants.) During my connection with the company it was not contemplated to use any other fuel than charcoal in this furnace.

Objected to by counsel for defendants.

Q. You have said, in answer to Mr. Hayden's question, that it was a part of the same transaction, giving this lease to the Pioneer Iron Co. as the giving of the deed and organization of the company?

Mr. HAYDEN: Wait a moment. I object to the statement as embodying the organization of the company, which I did not include in my question. To that extent you misstated my question.

Q. Was it not a very material part of the consideration for this 99-year lease that the company was to go and explore your lands and develop ore bodies upon them?

Objected to by counsel for defendants.

A. It was.

717 Q. And was it not true, Mr. Harvey, that you considered that the development of large mines upon your lands would more than compensate for the 20 or 30 tons per day that the Pioneer Iron Co. could use in its furnace at Negaunee? In other words, that by the exploration of your lands, it would do you more good by developing ore bodies than it would harm in the consumption in the furnaces that it had built there?

Objected to by counsel for defendants.

A. Undoubtedly, under those circumstances.

Q. Did you disclose to Mr. Reynolds, before you received the deed from him, the kind of a right you was to give to the Pioneer Iron Co. upon these lands to take ore?

Mr. HAYDEN: I object to this question for all of the reasons before given to the other questions; also because Mr. Reynolds is dead.

A. Undoubtedly. I mean that I did.

I could not be positive as to who drew the 99-year lease. I think I accepted it, and placed it on file for the company.

Q. In the 99-year lease you say: "The rights and easements above mentioned shall descend to the corporate successors of the party of the second part, but not to its assigns." I will ask you whether or not you intended to give the Pioneer Iron Co. the personal privilege of taking ore for use in its furnace and forges at Negaunee?

Mr. HAYDEN: I renew all of my former objections to this question. It is incompetent, it is immaterial, and such oral testimony cannot be admitted to alter or affect a written instrument. The other parties to the contract and all of them are dead.

A. Yes.

By the words "but not to its assigns" I intended to limit it strictly to the Pioneer Iron Co. during its corporate life.

718 Same objection by counsel for defendants.

I staked out the furnace ground.

Q. Was that long before the lease was made?

A. No; afterward.

Q. I now refer to the 99 year lease that was made in September?

A. Oh, yes, it was staked out before that time.

Mr. HAYDEN:

Q. Staked out after the deed was made?

A. Yes.

The witness continues:

The furnace was in process of construction at that time, probably had not got it running. I hired Mr. Hungerford of Connecticut in the spring of 1857. He was local agent. I am acquainted with L.

D. Harvey. I hired him. He acted in the capacity of master mechanic.

I said I received the consideration mentioned in the deed of April, 1857, from me to the Pioneer Iron Co. I don't exactly remember when. My part of the stock of the Pioneer was assessed the same as the others to pay that consideration.

It was from economical considerations that we came to erect a two-stack furnace at Negaunee instead of a one-stack, as originally contemplated.

Objected to by counsel for defendants on the same grounds previously set forth.

In the first place, the engine was large enough to drive two stacks instead of one. In the next place, it was considered that one would have to be shut down for repairs more or less often, and the other could be kept running in the meantime.

Q. Is it not true, Mr. Harvey, that a furnace is spoken of indifferently, whether it be a one-stack or a two-stack, spoken of either as a furnace or furnaces?

719 Objected to by counsel for defendants on the same grounds previously set forth, and also that it is immaterial.

A. I don't quite catch your meaning.

Q. If a furnace were erected which had two stacks, it would be proper, would it not, to speak of it as a furnace of two stacks or as two complete furnaces, either way, in your opinion?

A. Oh, a furnace with one stack would be a complete furnace. A furnace with two stacks, I should think, would be spoken of properly as a furnace also.

It was two complete stacks also. In the sense that it was two complete stacks, it would be double the capacity of a one-stack furnace, and neither stack would in any manner depend upon the other. It would be two complete furnaces in one. It was contemplated that charcoal alone was to be used as fuel. The object of selling the timber to the Pioneer Iron Co. on this six hundred and some odd acres was to furnish the charcoal for the furnace. I did not know of any coal deposits in the vicinity, nor contemplated any mineral coal would in any manner be used in the furnace as a fuel at that time.

Mr. HAYDEN: To that I make all the objections before made.

At the time of giving this 99-year privilege to the Pioneer Iron Co. I had never heard of coke being used as fuel for the reduction of iron ore to pig iron. At the time this furnace was built the vicinity was a wilderness.

Objected to by counsel for defendants.

The lands were covered mostly with maple timber. I began explorations upon these lands as the timber was cleared off. The

company also began explorations. That was a year or two after the main furnace commenced running. I think I employed a
720 man named Norman Eddy for that purpose. I think L. D. Harvey explored for the company at that time. These explorations were on the hill, facing the furnace to the south. These explorations were made in what I considered the most likely place to find ore. It would have been a continuation of the Jackson mine range or ridge. It was on the same side of the hill with the Jackson mine, which was a quarter of a mile distant, or such a matter.

Mr. HAYDEN: That is what you thought. Experience has demonstrated that is not so.

WITNESS: Oh, yes, I understand. We thought that, that is what we thought then.

There was ore there all the while, but it was not of a sufficiently good quality. You couldn't dig a foot deep without striking ore, but it was mixed with rock.

I can't say when the company ceased its explorations. I could not say whether they continued after I had to do with them or not. I didn't find sufficient ore at that time to warrant further exploration. I think I had better say sufficiently good quality of ore.

Q. Sufficient merchantable ore?

A. Yes. The hill was full of poor ore.

I was in the neighborhood long after I ceased to be connected with the company. I have no recollection of any kind as to when they actually did quit.

I believe at that time that there was a great future for the Lake Superior country, and especially Marquette county, in the development of a charcoal pig iron industry. It was generally anticipated, by both myself and Mr. Reynolds, and others, that if we could start one or more furnaces there it would give a considerable impetus to that infant industry.

Q. It was generally anticipated that it would make a better market for charcoal and iron ore and charcoal uses?

721 Objected to by counsel for defendants.

A. Oh, yes.

Q. And it was true, was it not, that it would have increased the value of lands, both mineral and timber, if such an industry had flourished in that vicinity, would it not?

Objected to by counsel for defendants.

A. It did flourish; it did raise the value, yes. It would have increased the value of the real estate in my particular descriptions considerable; and I anticipated such benefits. Aside from these lands, Mr. Reynolds, I think, owned entirely around Teal lake. I think he owned the entire shores of Teal lake. Mr. Reynolds considered it a great object to have this kind of an industry shoved along. He had a residence there, a summer residence on Teal lake, and he wanted to see things flourish there.

I negotiated the privilege by which the Pioneer got ore from the Jackson Iron Co.'s property.

Objected to by counsel for defendants.

It got its ore supplies mostly from the Jackson Iron Co.

Objected to by defendants.

This arrangement was for 25 years.

Objected to as immaterial.

Re-direct examination by Mr. HAYDEN:

I can't remember when that contract was made with the Jackson Iron Co. for the supply of ore for my company. I negotiated it, I think, before I made the arrangement with Mr. Reynolds. I mean the purchase from him. I carried it out soon afterwards, probably in the year 1857. I negotiated it with Mr. Kimball at his residence in Ohio. I remember going there purposely, and after that
722 it was when I instituted and continued for some time exploring on my own lands and these lands for the purpose of finding ore. I recognize my signature to the original deed from Charles T. Harvey to the Pioneer Iron Co., dated April 22, 1857, in which a consideration of $25,000 is named as the consideration. That is the deed referred to in my direct examination.

(The deed was thereupon marked by the notary J. A. F. for the purpose of identification.)

Q. This consideration then, as I understand you, of $25,000 was the same consideration that covered the 99-year lease subsequently executed?

Objected to by counsel for complainants, as that was not what the witness testified to.

Q. My understanding is correct. That is true, Mr. Harvey, that this $25,000 consideration for the deed also covered the 99-year lease, is that correct?

To which question counsel for complainants objected on the ground previously stated and the further ground that the witness has said that it was a part of the same transaction, but has not said that it was the consideration for the 99-year lease.

Q. Let us have no misunderstanding about it. If you are in doubt about what you said, we will have——

A. I should have to qualify, its being the same consideration for both, because it's a part consideration, but not the entire consideration.

Q. That is, there is simply a difference in meaning, it was a part consideration for the lease and a part consideration for the deed. Was it not?

A. Yes.

Q. That is your understanding?

A. Yes.

Mr. SHAULL: Do I understand you to say that a part of the $25,000 was a full consideration for the lease and a part of it a full consideration for the deed?

723 A. No, I didn't say that. I said a part of the consideration but not the full consideration. There were advantages coming to me that were also a part of the consideration.

Q. Advances of money?

A. Yes, coming to me personally.

Q. Not mentioned in the paper?

A. Yes; that is, the advantage that has been drawn out on previous portions of the examination. I had other advantages in view, in knowledge obtained, what the minerals were; their explorations, etc.

I conducted those explorations in part, and I found nothing worth prosecuting.

I have no recollection of executing before the 99-year lease of Sept. 17, 1857, another paper which the 99-year lease so-called, of September was designed to take the place of. I undoubtedly caused the 99-year lease and also the deed to be recorded.

Q. Will you look at this paper I show you and tell me if you signed it, executed it?

A. (Witness looks at paper.) Yes, that is my signature. That is my own handwriting in the body of the instrument.

At this point Mr. Shaull requested that he be permitted to see the paper to which counsel for defendants referred. This request was refused and thereupon Mr. Shaull, counsel for complainants, objected to examining the witness as to the paper above referred to, unless he was given an opportunity to examine it.

The witness continues:

Q. The paper is dated, as you see, the 22nd day of April, 1857? That is right?

A. Yes, that is correct.

Q. Now, will you read the paper through to refresh your recollection?

724 A. (Witness reads.) Yes.

Q. You have the instrument in mind?

A. I have the main parts.

Q. You didn't record that instrument, did you?

By Mr. SHAULL: I object to all this.

Q. Just look at it and see if it bears the certificate of record?

A. No; it don't appear to be recorded.

Mr. SHAULL: I object to this testimony all along this line, for the reason, first, that I have never been permitted to see the paper and don't know its contents. Second, that it is a paper which has been

superseded by an agreement between the parties, and all that the parties agreed to therein contained have been crystalized into the paper as recorded. And, third, that if it is for the purpose of contradicting or impeaching the witness the counsel for defendants is attempting to impeach his own witness. I don't know what the paper contains and cannot make my objections more specific for that reason.

Thereupon, at the request of counsel for defendants, for the purposes of identification, said paper was marked "J. A. F. 2" by the notary.

Mr. SHAULL: Now, Mr. Hayden, I desire to ask you this question upon the record. Will you now permit me to look at that paper for the purpose of ascertaining its contents and cross-examining the witness with regard to it, and for the purpose of making my objections more specific and any further objections which I wish to raise?

Mr. HAYDEN: My only reply is that I have not yet offered the paper in evidence.

Witness continues:

The principal members of the company during the time I was connected with it were William Pierceall, John C. Tucker,
725 Moses A. Hoppock, a person by the name of Mackay, don't remember his first name; L. T. Merrill, E. and T. Fairbanks & Co. of Vermont, and a person by the name of McKenzie, I don't recall his first name, a Dr. McKenzie. All those persons are dead. The members of E. and T. Fairbanks & Co., which I think was a corporation existing at that time, are dead. Mr. Pierceall was president of the company for a number of years, and afterwards succeeded by Mr. McKenzie, and Mr. Nelson was the treasurer for a while, and also L. T. Merrill. Those were the officers in New York.

Q. During the time that you were with the company acting, you represented all these—all these other stockholders and officers as the active manager and director of the company's affairs, did you not?

A. At Marquette?

Q. Yes.

A. Yes.

They made sales of metal in New York, various transactions of that kind, and negotiated loans which I didn't know of. I negotiated these deeds and contracts in the State of Michigan. I was their agent and trustee in that State, that is, I was their agent, trusted by them. I was never an official trustee, of course. They trusted me to do these things for the company. I promoted the company, that is, originated the company, got these other gentlemen to take stock and join me in the enterprise. Perhaps the use of the word "promoter" might not be proper, because I was taking an interest myself. Generally promoters are selling out. I retained the largest interest in the start, but I was what you would call the originator, the per-

son who first suggested the plan. These other gentlemen who went in with me and constituted the company paid their money into it, and also paid their assessment subsequently as I did.

726 I am not positive as to the day when I severed my connection with the company. I think it was 1865 I sold out all my stock. I sold it really to Samuel J. Tilden, although it was through a third party, I have forgotten who it was. Samuel J. Tilden is dead.

Re-cross-examination by Mr. SHAULL:

Q. Upon whose account was you exploring upon your lands that had this old lease on it, about 1860?

Objected to on the ground that the other parties are dead and that the testimony is incompetent and irrelevant.

A. Why, I considered I was exploring on my own account.

Q. For what purpose?

Objected to on same grounds as above noted.

A. Why, if I found anything valuable I proposed to take charge of it. I could sell the ores for export when the company could not, and I proposed to do that.

Q. That was while you were exploring?

A. Yes.

Mr. SHAULL: I now ask you, Mr. Hayden, to allow witness to take the paper which you have just shown him and which you had marked for identification.

Mr. HAYDEN: And my reply is that I have not yet introduced the paper in evidence, and that it is not a public document.

Q. I now state that I wish the witness to explain what the paper is and what its purpose was and what its terms are and ask you to hand it to the witness for that purpose?

Mr. HAYDEN: I have already answered your numerous inquiries on the subject.

Witness continues:

The fact of the existence of the paper was entirely out of my mind, but when I came to examine it, I think I can see the

727 explanation of it. I see it is dated New York. It was acknowledged in New York and dated at the same time that the deed was, and my explanation of the matter is that it was a memorandum given at the time as a proof that, at the proper time, an instrument of that nature should be given, but that it was considered simply as a safeguard against anything happening to me in the meantime. That I think is a proper explanation of the matter. That it was not regarded as anything final, as I said before. Simply a safeguard against anything happening to me until the thing could

be consummated, simply as a memorandum entirely superseded by the one dated later and given in the nature of a protection against anything that might happen to me in the meantime before the other was consummated.

The instrument as finally executed and acknowledged and recorded was the agreement.

Mr. HAYDEN: I move to strike out the testimony of the witness relative to the instrument just testified to as incompetent and irrelevant.

I have no recollection about this little memorandum. My belief is that it was kept in New York and never came into my possession again.

Q. I now show you the prospectus of the company which you looked at in a former part of your examination and from which I read to you certain pages, and ask you——

A. Allow me. I find here the names of the parties, the full names, if it is any object. And I forgot one man whom I did not happen to think of, Enoch C. Roberts. He is dead. Mr. McKenzie's name is John C. They are all dead.

Mr. SHAULL: I now hand the prospectus to the notary for the purpose of marking it for identification.

728 Thereupon said prospectus was marked "J. A. F." for identification.

The witness continues:

The paper which we have just been talking about, which was deposited as a sort of guarantee that I would live to execute the lease, is, I think, somewhat different in its terms from the lease. I think that instead of appearing to be a 99-year lease, it is a sort of in perpetuity. I think that is the phrase used. The matter as finally crystal-ized is in the form as it is on the record, and this was wholly superseded by that; and that as recorded was accepted by me for the company.

Re-direct examination by Mr. HAYDEN:

When I got home from New York to Michigan I then executed the 99-year lease, which is the instrument of record, and caused it to be recorded.

Q. The first paper mentioned was, as its date shows, contemporaneous with the deed, same date.

A. I think it was given at the same time.

Q. Showing it to be a part of the same transaction?

A. Yes, it was connected with the transaction.

Re-cross-examination by Mr. SHAULL:

Q. Was there anything said between you and the company as to te length of time for which you was to give them this personal

right to take ore, or was you to give it for such length of time as you saw fit, just as long time?

Objected to as incompetent and irrelevant.

A. I can't speak positively as to the surrounding circumstances, I only know it was satisfactory to them.

Q. What was said between you?

729 A. They appointed a committee to examine into the matter and they reported that it was in proper shape—a committee of the board. All the talk and passing of minutes back and forth, done nearly fifty years ago, has, of course, pretty nearly faded out of my memory.

Mr. HAYDEN: I now move to strike out all the testimony of Mr. Harvey elicited on cross-examination in the way of interpreting these written instruments, because it appears that all the parties in interest in the Pioneer Iron Co., except Mr. Harvey, at that time are dead and also because it clearly appears that this testimony is intended to change the force and effect of written instruments and is incompetent for that purpose.

The deposition of Mallon A. Gibbs, taken on behalf of the complainants in this cause, pursuant to stipulation between counsel for the respective parties, on the 23rd day of November, A. D. 1900, in the city of Buffalo, before Thomas E. Lawrence, notary public.

MAHLON A. GIBBS, sworn on the part of the complainants, testified as follows:

Direct examination by Mr. SHAULL:

My name is Mahlon A. Gibbs. Residence, 454 West Ferry street, Buffalo, N. Y. Age 51 years. Occupation, real estate loans and insurance. I went to Michigan in 1873 and ceased to reside in Negaunee August, 1897. My reason for going to Negaunee was I was employed as office person for the Iron Cliffs Co. by Mr. Barnum, the president. I continued in the employ of the Iron Cliffs Company until 1893 or 1894, I think. When I first went into their employ in 1873 I was errand boy; carried mail, cleaned office, cleaned lamps, carried telegrams and such things. I remained in that posi-

730 tion possibly three years. Next I was assistant bookkeeper for two years. Then head bookkeeper and cashier. I had full charge of all the books and accounts and the money and drafts, checks and everything, the financial part and the clerical part. I would draw the checks signed by the agent or general manager, and the drafts as well.

The books were the books that were used in the working operations of the company in its ordinary business, its books of account. All the men employed by that company would be paid

through these books. I was agent for the company after I held the position of chief bookkeeper and cashier. In that position I had charge of the furnaces at Negaunee, the two charcoal furnaces, and the houses and lands, aside from the mining property. That was under a different heading. Those were the Pioneer charcoal furnaces.

I think it was in 1891 or 1892 I became the general manager or agent. I think I was agent about two years before I left there. I can't give the dates correctly without referring to the books. I could tell by the payrolls. I had been cashier and chief bookkeeper from the time I was appointed to that office up to the time I became agent.

I am not able to tell when the Iron Cliffs Co. began the operation of the Pioneer furnaces. I think it was before my time. They did not continue to operate those furnaces as long as I was connected with the company.

—. When did they cease operating the Iron Cliffs?

A. When they sold to the Cleveland Iron Company.

Q. That was when, approximately?

A. I should say 1889 or 1890, possibly earlier.

I knew there was such an organization as the Pioneer Iron Co. during these years that I was working for the Iron Cliffs Co. As I consider it, it was all worked as one company. The Pioneer Iron Co. merely owned the furnaces and a certain tract of land adjoining that the Iron Cliffs Co. purchased, as I understood it.

731 Mr. HAYDEN: I object to this testimony as testimony showing ownership as incompetent for that purpose.

Q. Was the Pioneer Iron Co. carried as a whole on the books of the Iron Cliffs Co.?

Mr. HAYDEN: I object to that as incompetent and as not being the best evidence, also as immaterial.

A. The way it seemed to be, we had an account on our books called the Pioneer Iron Co., which I suppose was the amount of the purchase price by the Iron Cliffs Co. less whatever profits or losses there may have been by that company up to the time they took charge of it.

Q. You mean to say that was the price they paid for the stock of the Pioneer Iron Co. less the profit or loss?

Mr. HAYDEN: I object to that question as incompetent and as leading.

A. That was the way I always supposed it was, but have no knowledge of my own in regard to it.

Q. How was it carried on the books with reference to being in a lump sum or otherwise?

Mr. HAYDEN: I object to that question for the same reasons above given, as leading and incompetent.

A. It was carried in a lump sum.

The Pioneer Iron Co. had no separate office that I ever knew of. The only office I knew of at Negaunee was the one used by the Iron Cliffs Co. I had entire charge of all the books of that office. The Pioneer Iron Co. didn't keep any separate books during that time.

Q. Did they hire any men during that time?

Mr. HAYDEN: I object to the question as incompetent and immaterial.

A. They did not.

I do not think any checks were ever signed by the Pioneer Iron Co.

Same objection as above.

732 I do not think they did any mining of iron ore during that time.

Same objection.

Q. Would you have known it if they had hired men, operated furnaces or iron mines in Marquette county during that time.

Mr. HAYDEN: Objected to as leading, incompetent and immaterial.

A. I think I would.

The Pioneer Iron Co. never owned or operated any other furnaces aside from the two located at Negaunee, to my knowledge. On the books of the Iron Cliffs Co. each mine and each furnace was run as a separate and distinct company, showing the profit and loss of each, and they all merged into one profit and loss account.

Objected to as incompetent and also as immaterial.

There was no profit or loss account kept for the Pioneer Iron Co. property especially showing only such profit or loss as was made in the Pioneer Iron Co. as a whole?

Mr. HAYDEN: Same objection.

Q. I am now speaking of the books of the Iron Cliffs Co.

A. Yes, they were the only books we had.

Mr. HAYDEN: I object to the answer as not responsive and also as incompetent and immaterial.

Q. Who operated the Pioneer mine in 1896 and 1897 or 1897 and 1898 on section four in Negaunee?

A. Was that the branch of the Jackson Iron Company that you have reference to?

Q. I have reference not to the Jackson Pioneer mine, so-called, but to a mine opened on the lands of the Pioneer Iron Company over on section four, near the Lackawanna?

A. There was a mine opened there by the company.

Q. What company?

A. I think it was the Pioneer and Arctic lands.

733 Q. Who opened and operated that mine, your company?

Mr. HAYDEN: I object to that as leading and incompetent.

A. The Cleveland Cliffs Co.—under the head of the Cleveland Cliffs Co., I think it was.

I think all the ore from that mine was used in the Pioneer furnaces. I think I, acting for the Iron Cliffs or the Cleveland Cliffs Co., must have paid the men engaged in the operation of that mine. I forget under whose charge it was at that time.

Objected to as incompetent.

During my time the so-called iron money was issued up there by the Iron Cliffs Co. Nearly all the mining companies, I think, issued it at that time. I am not positive as to whether the Pioneer attempted to issue any such money.

Objected to as incompetent and immaterial.

I know the Iron Cliffs Co. did, and whether the Pioneer did or not I could not say positively.

I cannot say whether or not during my time the Pioneer Iron Co. had an independent board of directors. That would not come under my supervision, but I know there were no officers of the Pioneer Iron Co. at Negaunee.

Objected to as incompetent.

There was no agents as distinguished from the Iron Cliffs. (Same objection.)

I know John H. Abeel, of New York city. The only official position that I ever knew of his holding in the Iron Cliffs Co. was called the committee of accounts, but as to the year or years I could not exactly say, but I presume about that time, October 18, 1889. I know Alexander Maitland of Negaunee, Mich. I think he was a director of the Iron Cliffs Co. at that time. I am not positive as to that, but they had to have a resident director and I think he was it. He was also the general manager. I know Charles J. Canda of

734 New York city. He was secretary and treasurer of the Iron Cliffs Co. at that time. He was also a stockholder. George M. Miller of Montimore, N. Y., was a director, I think, at that time, and also a stockholder. I am not personally acquainted with H. Groenemeyer of New York. I know of him. He was clerk in Mr. Canda's office. I received communications from him on Iron Cliffs business every month.

Q. Speaking of the same time, did you know or know of Frederick Hudson, resident of New York city?

A. I have seen his name, but I don't think I have ever seen the party.

Q. What position did he have with the Iron Cliffs Company at that time, either as a stockholder, director, officer or agent?

A. Nothing that I ever knew of; possibly a stockholder. I remember seeing the name, that is all.

Q. You saw his name in your duties as Iron Cliffs Company employé?

A. Nothing more in any other way, I don't think, unless as on a list of stockholders. I might have seen it there. I remember the name, and that is all.

Abram S. Hewitt of New York city was a stockholder at that time, and I think he was a member of the board of directors.

Q. Were there any accounts of any kind kept in the name of the Pioneer Iron Co. during the time you were connected with the Iron Cliffs?

Mr. HAYDEN: I object to the question as incompetent.

A. Not on our books.

I know Lewis Corbit of Negaunee, Mich. He was kind of a furnace bank foreman about 1886 or 1887; attended to the keeping of the men's time and receiving of charcoal. It was part of my duty to pay such men as Corbit and others. I did when I was cashier.

735 I know ore was hauled from section 4 to the furnace, and I think Corbit hauled a part of it. Peter La Meer was carpenter there for the Iron Cliffs Co. and the Cleveland Cliffs Co. at Negaunee. He attended to repairing wagons and work of the company. John Downing was founder working for the Iron Cliffs Co. at Negaunee, at the Pioneer furnaces. I cannot tell how long without reference to the books, but should judge that he was there at least five years, possibly more, during the time I was there. John Stewart was employed by the Iron Cliffs Co. for a great many years during the time I was with them.

Mr. HAYDEN: The foregoing and all similar questions are objected to as immaterial.

W. H. Fuller had charge of the barn. He is now with the Cleveland Cliffs Co., I understand.

Q. What company was he with when you were with the Iron Cliffs?

Mr. HAYDEN: Objected to as immaterial and incompetent.

A. With the Iron Cliffs Co., same as myself.

He was with the Iron Cliffs until he changed to the Cleveland Cliffs Iron Co.

Q. Until what time did he work there as barn boss?

A. All the time he lived at Negaunee, from 1873, I think, until they left Negaunee and went to Gladstone.

Q. You refer to the time the furnaces left Negaunee and went to Gladstone?

A. Yes, sir. Until the time they abandoned the furnaces at Negaunee.

I was with the company when they abandoned the furnaces at Negaunee. I left there when they discontinued business at the furnaces. There was nothing more in that line to be done for me there.

Objected to as immaterial and irrelevant.

736 That was the time I finally severed connection with them. I think a man by the name of M. Guthier worked for the Iron Cliffs Co. I think a man by the name of Cæsar Chapifone worked for the Iron Cliffs during the time I worked for them. Patrick Reedy worked for the Iron Cliffs Co. at the furnace.

Mr. HAYDEN: All questions pertaining to the one, two or three hundred different employés of the Iron Cliffs Co. I object to all questions concerning them as immaterial.

I think he had a contract at the mine on section 4 at one time for mining. I am not positive whether Dan Flynn worked for the Iron Cliffs Co. or not; I think he did for a time. (Objected to as incompetent.) John Mulvey never worked for the company that I remember of. (Objected to as immaterial and incompetent.) Thomas Carmichael worked for the same company I did, I should judge for 8 or 10 years. He was assistant bookkeeper under me. Afterwards when I was appointed cashier he was chief bookkeeper.

Cross-examination by Mr. HAYDEN:

William G. Mather, the president, appointed me agent of the Iron Cliffs Co. I was not appointed agent of the Cleveland Cliffs Co. I superseded Alexander Maitland as agent. There was no interval between the time he ceased to be agent and my appointment. I think I succeeded him immediately.

I had the same powers as Maitland at the furnaces and houses and buildings there in Negaunee. The business was conducted differently toward the latter part. They made a branch and called it the mining department, and a man had charge of that independent of the Negaunee furnace. That was made a branch of itself. Mr. Maitland formerly had charge of both before they were run under two different headings.

737 Mr. SHAULL: I object to that as irrelevant.

When I became agent Mr. F. P. Mills was put in charge of the mining department. The office in Negaunee was the only office possessed by the Iron Cliffs Co. that I ever knew of while I was office boy, assistant bookkeeper and bookkeeper. There was an office of the secretary and treasurer in New York city, one of the sales agent in Chicago, Mr. James Rood.

Q. Then as a matter of fact you had no communication with any office in New York, for example, had you?

A. At Negaunee I understood the question. The answer I would

give there was no other office at Negaunee but the one I was connected with for the Iron Cliffs Co. We had an office of the secretary and treasurer at New York city and one of the sales agent at Chicago Mr. Rood. I think that covers the two.

I suppose the stockholders' meetings were held in New York. I was never present. I suppose the officers were elected in New York city. That is, at the time of the Iron Cliffs. Of course the Cleveland Cliffs was at Cleveland, Ohio. I was never present at any stockholders' or directors' meetings. I frequently had notices of the stockholders' meetings, being a stockholder at one time, but never attended. I do not know whether or not the Pioneer Iron Co. elected directors and officers annually. I never heard of their doing so. I do not know that they did not do so.

I think I was at Negaunee when the Arctic Iron Co. was organized and began business. I had charge of the leases that were signed by the Pioneer and Arctic Iron Co. and were in my possession. They were papers that gave options on their lands or leases.

Objected to as immaterial and irrelevant.

They were leases for exploring and mining of iron ore.

Q. Did you take any part in the negotiations or in the making of the contracts on behalf of the Pioneer Co.?

738 Same objection.

A. I think I did some work in regard to putting them up, but I am not positive, I think I did.

Q. Did you act in behalf of the company in executing these contracts of the Pioneer Co.?

Mr. SHAULL: Same objection.

A. I do not think I did. I do not think I would have had any authority in the positions I held.

Q. Where were they executed on behalf of the Pioneer?

Mr. SHAULL: Same objection.

A. At Negaunee.

Q. By whom?

Mr. SHAULL: Same objection.

A. By the Pioneer Iron Co., I suppose.

I forget whether the president used to sign them or the manager acting for the Pioneer. (Same objection.) The same man that was the manager of the Iron Cliffs or Cleveland Cliffs was the manager of the Pioneer. I think, I am not positive. (Same objection.) I think the same party that was president of the Iron Cliffs or Cleveland Cliffs was also president of the Pioneer.

Objected to on the same ground.

I could not say whether it was W. H. Barnum that was the pres-

ident of the Pioneer in 1887 and 1888 and 1889. I think W. H. Barnum was the president at that time, but am not positive without referring to the books. My answers relative to the business conducted there at Negaunee while I was in the office in one capacity or another are based principally upon my recollection of the books.

Q. Who was the manager of the Pioneer Co. in 1887, 1888 and 1889?

Mr. SHAULL: Objected to on the ground that it assumes that they had a manager, and that fact is not shown.

739 A. I do not know of any other manager only the one that was manager for the Iron Cliffs and Cleveland Cliffs Co. I don't think they had any manager especially for the Pioneer Iron Co. in these years. I think the Pioneer Iron Co. made contracts through its manager in these years. I do not know without referring to the books what the name of that manager was. Alexander Maitland was manager for a time, and I presume he was the one. It might have been T. J. Huston. I am not positive without refreshing my memory from the books and papers.

Q. Until you became agent the business, whatever it was, conducted by either the Iron Cliffs or the Pioneer Co. in the county of Marquette, was conducted by the manager, was it not?

Mr. SHAULL: Objected to on the ground that it assumes that the Pioneer conducted business.

A. As I understood, the manager—whatever party was acting as manager for one company also acted as manager for the other.

Q. And he is the one who did the business up to the time when you became agent, was he not?

A. I don't think there was very much business done by them the last few years of Mr. Maitland's being manager. I don't think the Pioneer and Arctic were very active. I know I had nothing to do with the Pioneer and Arctic.

Q. And of anything to do with the management of the business of the Iron Cliffs Co. until you became agent?

A. Before I became agent I had all the duties that came under my jurisdiction, according to the positions I held. I was not manager or agent or had nothing to do in regard to these duties as cashier and bookkeeper. I just had the duties of my position.

The duties of manager were to manage the affairs of the
740 company under the president, by order of the president. The bookkeeper kept all the accounts of the Negaunee office, and attended to their being kept.

At the time Mr. Maitland ceased to be the manager and agent and I became agent of the furnace department there was no misunderstanding or trouble between me and Mr. Maitland; never had a word; no trouble on my part; if there was I never knew of it.

Objected to as immaterial and irrelevant.

The cause of my ceasing to be agent was there was no further duties to be performed. I don't know whether Mr. Farrell was appointed at Negaunee to succeed me as agent in charge of the business of the company. He succeeded me to go to Gladstone to take charge of the new furnace they were going to build there. I do not think he did anything at Negaunee, because the furnace was never used by them long after I left them. He came there as agent of the company to superintend the building of a new furnace at Gladstone; to have charge of it, and he might have been at Negaunee for a time before they commenced work there, but how long I do not know. I do not think the furnace in Negaunee was in blast under his management; if so, it was a very short time.

I think Samuel Redfern had the title of land agent, and looked after all the lands of the Pioneer Iron Co. after I ceased to be agent.

Re-direct examination by Mr. SHAULL:

Q. Did you ever receive any of your pay or compensation from the Pioneer Iron Company when you were with the Iron Cliffs Co.?

Mr. HAYDEN: Objected to as improper redirect examination and as part of the examination in chief, also as incompetent and immaterial.

741 A. I did not.

Q. You have said upon cross-examination that the man who was manager of the Iron Cliffs Co. while you were bookkeeper and cashier looked after such business as the Pioneer might have, if it had any in Negaunee.

Mr. HAYDEN: I object to the question as a misstatement; also to it as leading; also incompetent.

A. That is as I supposed.

Q. Did you draw the checks to pay the manager a portion of the time—was he paid through your office?

A. What office?

Q. The manager of the Iron Cliffs Co.?

A. He was.

Q. Did the Pioneer Iron Co. pay any portion of his salary?

Mr. HAYDEN: I object to the question as incompetent and immaterial.

A. They did not.

Re-cross-examination by Mr. HAYDEN:

Q. How do you know that the Pioneer Iron Co. paid no part of that salary?

A. All I go by is the books we kept and that I had charge of in our office.

Q. You were testifying then from your recollection of the books and also from your recollection of the books kept at Negaunee?
A. Yes, sir. These are the only ones I had charge of.

Mr. HAYDEN: I move to strike out the last testimony of the witness on redirect examination, also all of his testimony on direct examination, on the ground that the answers of the witness show the testimony is incompetent.

742 Re-direct examination by Mr. SHAULL:

Our books at Negaunee took care of all the expenses of mining, including the salary of manager, until it was put in a separate department, the mining department, and the secretary and treasurer and sales agent paid themselves and their clerk hire. That was all I ever knew of. We used to transfer the accounts from their books to ours monthly.

Re-cross-examination by Mr. HAYDEN:

We used to transfer accounts at Negaunee. By "we" I mean the Iron Cliffs Co. We transferred the accounts from the secretary and treasurer's office, and also the sales agent at Chicago, sales of ore and iron and money received for the same, and the expenses of each of their offices; we would transfer all these expenses to our books.
Q. You are now stating your recollection of what the books showed, are you?
A. I know what they showed in regard to these things. I am positive as regards this.
Q. You do not want to answer the question?
A. Yes, what the books showed.
Q. (Question repeated.)

Mr. SHAULL: The last question is objected — on the ground that it has been fully answered by the witness.

A. Yes.

The said several foregoing depositions were properly signed by the witnesses.
Attached to the foregoing depositions are the certificates of the notaries before whom the same were respectively taken, said certificates being in the usual form in such case made and provided.
743 All the exhibits referred to in said depositions were attached to, duly certified by said notary and returned with said depositions to the circuit court for the county of Marquette in chancery.
Mr. SHAULL: I offer in evidence the bill and answer and decree in the case of the Negaunee Iron Company *vs.* Edward Breitung *et al.*, a chancery case begun in this court in the 70's some time.
Mr. HAYDEN: We object to it as irrelevant.

All the files in the case were afterwards introduced in evidence during the argument and used by both parties.

The bill of complaint sets forth the deed and contract A from Reynolds to Harvey (appearing in this case as Exhibit A and annexed to the bill of complaint). It sets up the leases of February 1, 1871, from Charles T. Harvey and James L. Reynolds to said Breitung (appearing elsewhere as exhibit to the testimony of James F. Foley in this case); the assignment of said leases to the Managanese Iron Mining Company; the mortgage from Charles T. Harvey and wife to Edward Breitung (the mortgage introduced by complainant elsewhere appearing in this case); the default in the payment of said mortgage; the foreclosure of said mortgage by Edward Breitung in the court of chancery, the sale of the premises, to-wit: the same lands as are described in the said mortgage from Harvey to Breitung mentioned, shown on plat 13 herein, and the purchase at such foreclosure sale of said premises by Maas and Lonstorf, and the conveyance by Maas and Lonstorf of their interest to the Negaunee Iron Company.

The bill sets forth that the heirs at law and persons claiming under the last will and testament of James L. Reynolds claim to be entitled to receive from the lessees of said land one-half of all the royalty for iron ore mined on said lands, and that the same lessees have heretofore recognized said claim and have paid one-half
744 of said royalty to said persons claiming an interest in the said lands as aforesaid.

The bill then alleges that the Reynolds heirs under the will of said Reynolds claim title to one-half of all the mineral contained in said land in fee by virtue of said contract A attached to said deed from said Reynolds to Harvey, and that in pursuance of the said claim said heirs did, on the 5th day of March, 1877, execute and deliver to Edward Breitung an instrument in writing whereby they assumed to extend the mining lease from Reynolds to Breitung for the term of fifteen years from December 1st, 1876.

The bill then claims that under the reservation in contract A, James L. Reynolds retained only a life estate in said property; that as he was dead the entire estate had come to the Negaunee Iron Company upon the purchase at the foreclosure sale under the mortgage from Charles T. Harvey; that the claim of the heirs of James L. Reynalds to own an undivided one-half interest in the minerals in said land—

Under the following pretences that annexed to and forming a part of the warranty deed executed by said James L. Reynolds to the said Charles T. Harvey, February 26, 1857, as above set forth, there was a writing referred to in said deed as letter A, a copy of which pretended letter A is hereto attached, marked Exhibit G.

That about the first day of February, A. D. 1871, William C. Reynolds, as attorney in fact, claiming to act as such under power of attorney, of which a copy is hereto annexed, marked Exhibit H, made and executed with the said Charles T. Harvey in the name of

the said James L. Reynolds an agreement, a copy of which is hereto annexed, marked Exhibit I. (Called in this case the "definition agreement.")

745 That on the first day of February, A. D. 1871, said William C. Reynolds, as attorney in fact for said James L. Reynolds and in his name, claiming to act under the power of attorney aforesaid, executed with said Edward Breitung a certain agreement called a lease, copy of which pretended lease is hereto annexed and marked Exhibit K. (Introduced in this case as Defendants' Exhibit 03 in the testimony of James F. Foley.)

That said James L. Reynolds, at the time of his decease as aforesaid, left a will whereby he bequeathed certain interests in and to all his property to them, the said claimants, either as legatees, trustees or executors, but of the precise nature of the claim and pretences of said defendants in relation thereto your orator is ignorant.

That by virtue of the said several instruments and premises the said James L. Reynolds at the time of his death was the owner of an estate of inheritance in the undivided one-half of the iron ore upon or beneath the surface of said lands; and that he and his heirs and assigns had the right forever to enter upon the said lands for the purpose of mining said ore, subject to the said restrictions and agreements contained in the several pretended documents aforesaid; and that he had the right to receive one-half of the royalty on iron ore mined and to be mined thereon by said Edward Breitung and his assigns under the several leases and agreements aforesaid; and that such right and interest passed to and became vested in them under and by virtue of said will of said James L. Reynolds.

The bill further alleges in the 16th paragraph as follows:

"But your orator says that it is advised, and, therefore, expressly charges that no estate of inheritance or other interest capable of being transmitted by inheritance, devise or assignment was reserved by, or remained in, said James L. Reynolds after the said conveyance to Charles T. Harvey of February 26, 1857, and that nothing

746 was done subsequent to that conveyance whereby any greater or other interest therein was conferred upon him than the rights and privileges reserved in and by said deed of conveyance, and that no rights reserved therein were capable of being transmitted, by assignment, devise or inheritance, and that your orator by virtue of the said several conveyances is the owner of said lands in fee simple, free from any claim or interest of the said persons claiming under the will of the said James L. Reynolds as aforesaid, and entitled to receive the entire rents and profits thereof and to be recognized by said tenant as the only owner of said premises and of the mines and minerals thereon."

The bill prays that complainant's title to the land may be quieted as against the claims of the Reynolds heirs and persons holding under Reynolds' will, and that they be enjoined from setting up or claiming title adversely to that claimed by the complainant, and

from collecting any royalty on account of minerals, and that they be decreed to quit claim to complainant all their right or interest claimed by them, and that Breitung and the Manganese Iron Company be enjoined from recognizing persons claiming under the will of James L. Reynolds as owners of any right, title or interest in the premises or minerals thereon, and from paying any further royalty to them, and requiring them to pay the entire rents and profits to the complainant, and that the Reynolds heirs account to complainant for whatever royalty they had received.

The heirs of James L. Reynolds were admitted as defendants, to answer the bill. These heirs were William C. Reynolds, Mary G. Reynolds, Henry G. Reynolds, James D. Reynolds, Edward B. Reynolds.

Answer of Defendants.

The defendants admit:

(*a.*) That Breitung and the Manganese Iron Company claimed to work the mines by virtue of an arrangement made between
747 Brietung and Harvey with Reynolds whereby one-half of the royalty should be paid to Reynolds, his heirs, legatees or personal representatives.

(*b.*) That Reynolds died testate February 3, 1873.

(*c.*) That William C. Reynolds, James D. Reynolds, and Henry G. Reynolds in their own behalf and right and Henry G. Reynolds and Byron Lathrop, as trustees, with one Z. S. Ely, for Edward V. Reynolds, claimed to be entitled as legatees or devisees of James L. Reynolds, to receive from the lessees one-half of the royalty for iron ore mined on said lands and that said lessees have hitherto recognized said claim and paid said one-half of the royalty to them.

(*d.*) They deny the allegations of the bill that they have no right, title or interest in the lands or in the rents, issues or profits thereof and aver their right to the same.

(*e.*) And they admit that they base their claim in part on a certain writing referred to in the deed from Reynolds to Harvey of February 26, 1857, as letter A, and also upon a certain instrument in writing between James L. Reynolds by William C. Reynolds, his attorney, known as the definition agreement of 1871, and also under a lease of date February 1, 1871, by James L. Reynolds to Edward Breitung; that the definition agreement was with the knowledge and approval of James L. Reynolds and was ratified by him and that the agreement was made upon a valuable consideration to Harvey by him at that time received.

(*f.*) They admit that they claim by virtue of his ownership of said lands prior to said conveyance to said Harvey and the said writing attached to said deed to Harvey (contract A) and the said writing exhibited thereon, said James L. Reynolds was at the time of his death the owner of an estate of inheritance in the undivided
748 one-half of the iron ore upon or beneath the surface of said lands and that by virtue of said lease to said Breitung he was

entitled to receive the royalty provided therein to be paid for iron ore mined thereunder.

In the evidence introduced by defendants in that case, the power of attorney to William C. Reynolds under which the definition agreement of February 1, 1871, and the lease from Reynolds to Breitung of the same date were made in the name of James L. Reynolds, by William C. Reynolds as attorney in fact, was introduced in evidence by defendants and is as follows:

"The undersigned, James L. Reynolds and Mary G. Reynolds, his wife, formerly of Chicago, Illinois, hereby constitute William C. Reynolds of said Chicago, their attorney in fact for them and in their name, place and stead to lease, divide, sell, transfer, convey, any and all lands, real estate or chattels real, belonging to them or either of them in Marquette county, State of Michigan, including all hereditaments, corporeal or incorporeal minerals and mining rights and all other interests legal or equitable in such lands, in such parcels, on such terms and for such prices as said attorney may deem expedient, to receive rents or purchase monies; to release mortgages, etc. Giving and granting to said attorney as full power and authority in the premises as said constituents could exercise if personally present.

Witness their hands and seals December 2, 1870.

JAS. L. REYNOLDS. [SEAL.]
MARY G. REYNOLDS. [SEAL.]

In presence of—

WM. HALL.
FRANK V. SCUDDER.

WILLIAM C. REYNOLDS, as a witness in said cause, in behalf of said defendants, testified in substance:

James L. Reynolds died February 3, 1873. During the
749 life of James L. Reynolds, for half a dozen years prior to his death, I had almost exclusive control of his business upon salary and acted in the management of his property and the sale thereof under a power of attorney executed in 1866, under which I transacted all of his Chicago business. He also had property in Marquette county, Michigan, consisting of an undivided mineral interest, claimed under a reservation in a deed of several thousand acres of land to one Charles T. Harvey, made in 1857. Relative to this interest, my father and mother, James L. Reynolds and wife, executed to me a power of attorney, dated December 2, 1870. (This is the power of attorney above referred to.) This power of attorney was recorded in the registry of deeds of Marquette county.

Q. At the time that this power of attorney was prepared and executed had any question arisen between your father and Mr. Harvey, as to the effect of the reservation that you have mentioned in the deed to Harvey?

A. At that time there was no—there had been no discussion between my father and Mr. Harvey directly. I can state the case better by giving a narrative of the circumstances under which it was made, and for what purpose.

Q. You may do so briefly.

A. In November, 1870, I received a letter from Mr. Donkersley of Marquette, informing me of the discovery of iron ore in considerable quantities upon the land conveyed by my father to Mr. Harvey in 1857—also informing me that Mr. Harvey had executed a lease to Edward Breitung and applying for a lease to himself, Donkersley, from my father—he also sent me a copy of the original deed. About the same time I received a similar communication from Mr. Breitung and from several other parties including the persons representing the Iron Cliffs Com-
750 pany of Marquette county, a Mr. Jacob Houghton, claiming an interest with or through Breitung under the Harvey lease also called upon me and stated that they had employed Judge Douglas of Detroit to advise them as to the legal rights of my father in the premises. I thereupon investigated the matter thoroughly and sent a brief upon the legal questions involved, to Judge Douglas, and early in December I prepared and forwarded to my father the said power of attorney so that I might be able to act concerning the property.

After several months' consideration, I agreed with Mr. Breitung to confer with Harvey and started January 27, 1871, and went to New York with Breitung and had a conference with Harvey and Breitung on February 1, 1871, and spent several days there and at Tarrytown, New York, at the residence of Harvey in conference with him and Breitung. I had with me the records and copy of the deed of 1857 from my father to Harvey. There was considerable discussion as to its legal effect. I told Harvey that while I had no doubt that my father retained an estate of inheritance in an undivided one-half of the minerals, to remove all doubt and place our respective interests in a position so that they could be handled easily, I wanted him to execute an agreement specifically recognizing my father's interest as to said inheritance. Such an agreement was executed at that time by Charles T. Harvey and myself, as the attorney for James L. Reynolds. (This was the definition agreement of February 1, 1871.) This agreement was drawn by me with great care and I frequently referred to it afterwards. Afterwards, in conversation with my father, he recognized and approved the contract. (The definition agreement.) My father congratulated me upon making so satisfactory a settlement and said that it was a great surprise to him as he had feared that Mr. Harvey
751 would get the better of me and as a token of his appreciation of my service, promised me one-half the royalty for the first year, in addition to my regular salary. The following summer, when he (James L. Reynolds) was back in Chicago, he examined the original agreement with Mr. Harvey, and also the original lease

which I had made as his attorney, with Mr. Breitung, and strongly expressed his satisfaction with them. (The lease mentioned was introduced in evidence by defendants in their answer and attached to the testimony of William C. Reynolds and is the same lease set forth as Exhibit 03 of the defendants, Iron Cliffs Co., Cleveland Iron Company *et al.*)

Q. You may state whether if you know there was any consideration with Mr. Harvey at the time of the execution of the agreement for the same, and if so, the nature of said consideration?

A. Mr. Breitung had received a lease from Mr. Harvey in October, 1870, but declared that he would not attempt to work under it, unless he also received a lease from my father, and there were various other parties desiring a lease, and especially the Iron Cliffs Company, which already claimed an interest under the former contract from Mr. Harvey, and intimated that trouble might arise if a lease was executed by my father to any one except the said company. I made it a condition of the lease with Mr. Breitung that Mr. Harvey should execute this explanatory agreement with my father.

Q. The papers—the lease and agreement that were subsequently executed together, then as I understand you, Mr. Harvey was obliged to execute this agreement with your father, in order to enable him to make a lease of his share of the minerals to Mr. Breitung, is that so?

A. He had already executed a lease to Mr. Breitung in the
752 previous October, but Mr. Harvey himself desired to modify that previous lease when we had come to an agreement. I drew up a lease from my father and a new lease also for Mr. Harvey to Mr. Breitung. The negotiations took the better part of a week and Mr. Harvey in the course of it suggested that Mr. Breitung was anxious to get away and that we should make a lease to him, and then discuss the questions between Mr. Harvey and my father afterwards. I refused to execute any lease unless the point which I insisted as my father's rights against Mr. Harvey were conceded and agreed upon.

Q. And as a consideration for the agreement with your father, you joined in a lease, or leases to Mr. Breitung, is that correct.

A. That was part of the consideration, and partly the defining more definitely Mr. Harvey's own rights in the premises, than they had been defined in the previous paper, attached to the deed from my father to him.

The lease above mentioned (Defendants' Exhibit 03) was executed at Tarrytown at the same time as the definition agreement.

After I had made the agreement with Harvey at Tarrytown for the lease to Breitung and the agreement, I wrote to my father then in California, on February 7th, and explained the circumstances and results of my interview with Mr. Harvey to him fully and I assume that he received that letter because I found it among his papers after his death, filed away where he kept valuable papers,

and it was after I wrote this letter that I had the conversation with him above mentioned. (This letter so referred to was produced by the witness and attached to his deposition, and is as follows:

"26 WEST 26TH STREET,
TUESDAY EVENING, *Feb.* 7, 1871.

"DEAR FATHER: I've just closed up matters with Breitung and Harvey after a pretty hard week's work. I found there
753 was nothing to be done with the Iron Cliffs people. If I'd leased to them there'd be nothing but an everlasting lawsuit. Last Thursday I went with Breitung to Harvey's house at Tarrytown and remained until Friday evening. We substantially agreed on a basis of settlement. I was to draw up papers on Saturday morning. Breitung and I again went to Tarrytown and I've just returned. We expected to get through yesterday in which case Breitung would have taken the evening express train for the West—the train which was so dreadfully smashed and burned.

The reason we didn't get through yesterday was that Harvey had struck out a lot of new ideas and was somewhat intractable. Last Friday we had about settled down to a 40c. royalty (to each 20c.) and I proposed to reserve the right to take 40 or 80 acres at same rate until you went to Lake Sup'r next summer. But when Harvey handed me his draft of memoranda for his lease to Breitung, I saw he'd kept the royalty to himself 25c. If we had *insisted*, Breitung would have been compelled to pay (or at least to *agree* to pay) 50 cents a ton, because he was in my power; but I felt convinced it would be poor policy to place the royalty at so high a figure. Better it should afford him a good margin so as to thoroughly develop the property. He might afford to pay 50c. and make something for a year or two, but after the surface is skinned and mining becomes more costly it would be different, and no one can say what reverses the iron interest may not suffer during 15 years. So I considered that 40c. would be the best figure. Yesterday Harvey tried to get me to make it 45c. of which he should have 25c. and you 20. He urged that he had lost heavily in developing that country; that he had gotten through the Peninsula railway which alone made 45 cents or 50 cents possible as a royalty; yet after all his efforts he was in debt and his interest attached for debts growing out of his Chocolay furnace enterprise and branch railway, etc., etc. Upon this text, he argued for *two hours;* but without changing my determination, and he finally yielded. I had prepared a document for execution by Harvey and myself to define and settle somewhat the construction of your deed to him. It started by declaring that there was reserved to you and your *heirs* and assigns an undivided one-
half interest in the minerals. This was a question it took
754 me ten days satisfactorily to settle in my own mind, and I didn't want future generations of lawyers to waste their time over the same question! When Judge Douglas took hold he was much in doubt; but after my really *thorough* brief he did settle

down and give finally a positive opinion on *this one* point. Still, I didn't feel satisfied to have the question remain one of mere *construction*, especially as some decision (for instance, in the Mass. supreme court) were directly adverse to the claim of more than a life estate.

Harvey vaguely intimated his recollection that you only proposed to reserve a life estate, but I assured him strenuously to the contrary. Then he proposed to leave the question to some able lawyer as referee and abide by his decision. I replied that he had already the opinion of one able and disinterested lawyer—Judge Douglas—and my own opinion was the same on this point. Therefore, I'd sooner rest on the original deed itself than on the construction which some third lawyer might place upon it. Then Harvey said it would take some days to go through the question between us and we might as well make the lease to Breitung and settle the other questions at our leisure. I wasn't so green a bird as to be caught with such chaff. I knew my sole chance of getting a square declaration from Harvey lay in making it and the Breitung lease stand together. I told him I'd come East for the sole purpose of getting a good understanding and I wanted to accomplish it.

Finally we executed a document embracing the following points:

1st. Recognition of your right in perpetuity.

2nd. The ore used for furnace of Pioneer Company and by furnaces—not exceeding two stacks—at Chocolay (to be licensed by Harvey) shall not be accounted for to yourself. For all other ores mined ½ to be accounted for to you whether manufactured in Marquette county or not.

3rd. The liability to account to be mutual and concurrent in respect to all ore mined by either tenant in common and the basis to be the value of the royalty or mining right at the time of taking.

As the entire property (except 40 acres) which contains mineral, is now leased to Breitung for 15 years, I trust the chance of a lawsuit with Harvey is an improbable contingency.

755 This 40 acres not included in Breitung lease is the S. W. ¼ N. W. ¼ sec. 7 (adjoining the McComber mine which is in the N. W. ¼ N. W. ¼ of section 7) and constitutes—so Breitung says—the cream of the whole tract. Last week I talked about reserving this myself; but yesterday I saw clearly that if I did so it would be the pretext for a demand of further concessions from Harvey, so I let it slide.

Harvey makes one lease to Breitung and you a separate lease. He is to pay each of you 20c. a ton, and the lease may be forfeited if the royalty any year is paid on less than 10,000 tons.

So, your *minimum* income under this lease will be $2,000 (and I shouldn't be surprised if some year it reached ten times as much). I've secured your rights under the lease as well as I could, by providing forfeiture in case of default and right to enjoin taking ore, etc., etc.

I feel tolerably tired this evening. Yesterday and today I wrote,

or copied, over 100 folios (one hundred words). I will now rest and amuse myself for two or three days and then go home. I will, perhaps, come East again in April to draw up business.

Your aff. son, W. C. REYNOLDS.

P. S.—Breitung is to get White's attachment out of the way; and Harvey is to give Breitung a mortgage and repay the am't from the royalties wh. accrue. I will probably start home Thursday evening."

At the close of the case, and on November 20, 1880, the court entered a decree as follows:

"This cause came on to be heard and was argued by counsel at the present term of this court; and the court having fully considered the pleading and proofs and the argument of counsel therein,

It is now by the court ordered, adjudged and decreed,

"That the bill of complaint of the said complainant The Negaunee Iron Company in this cause, be, and the same hereby is, dismissed."

Mr. SHAULL: I now offer an agreement between James L. 756 Reynolds and Charles T. Harvey, executed by James L. Reynolds by Wm. C. Reynolds, attorney in fact, dated Feb. 1, 1871. Recorded March 7, 1871, in Liber 1 of Miscellaneous Records, page 304.

Mr. HOYT: We object to that as irrelevant and incompetent.

Mr. SHAULL: I now offer a power of attorney from James L. Reynolds to Wm. C. Reynolds, dated Dec. 2, 1870; recorded March 4, 1871, in Liber 1 of Miscellaneous Records, 302; being the power of attorney authorizing the above contract.

Mr. HOYT: The same objection is continued as to that.

Mr. SHAULL: I now offer the files in the case of The Arctic Iron Company *vs.* The Pioneer Iron Company, in chancery in Marquette county, started in 1889—that is, the bill and answer in that case.

Mr. HOYT: The same objection is continued as to that.

Mr. SHAULL: I offer all the files in the case."

The bill avers the corporate existence of the Pioneer Iron Co. and alleges:

1. Ownership by the parties as tenants in common of the minerals upon the

	Sec.	Tp. N.	R. W.
W. ½ of N. W. ¼ of	6	47	25
E. ½ of E. ½, N. ½ and S. W. ¼, of N. W. ¼	1	47	26
N. W. ¼ of N. E. ¼, S. ½ of N. E. ¼, N. ½ of N. W. ¼ and S. E. ¼ of N. W. ¼	2	47	26
N. W. ¼, N. ½ of N. E. ¼ and S. W. ¼ of N. E. ¼	3	47	26
N. ½ of	4	47	26
N. E. ¼ and S. E. ¼ of S. E. ¼	5	47	26
All that part of S. ½ of N. W. ¼ of sec. 5, lying S. of Co. road as established in 1862	5	47	26

S. ½ of N. W. ¼	6	47	26
All that part of N. E. ¼ of S. W. ¼ of sec. 6, north of Partridge brook	6	47	26
W. ½ of N. W. ¼ of S. E. ¼	6	47	26
All that part of W. ½ of S. W. ¼ of S. E. ¼ of sec. 6, north of Partridge brook	6	47	26
All that part of S. E. ¼ of N. E. ¼ and S. W. ¼ of N. E. ¼ of sec. 6, west of land of Negaunee I. Co., all in	6	47	26
W. ½ of E. ½ of S. W. ¼	31	48	26
N. W. ¼	32	48	26
S. W. ¼ of N. E. ¼ and N. W. ¼ of S. E. ¼	32	48	26
E. ½ of N. W. ¼ of S. W. ¼	32	48	26
757 All that part of N. E. ¼ of N. W. ¼ of sec. 32, north of M. H. & O. R. R.	32	48	26
That part of E. ½ of S. W. ¼ of S. W. ¼ of sec. 32, north of M. H. & O. R. R.	32	48	26
All in	...	48	26

2. Complainant is the owner of an undivided half of the minerals in said lands, together with the right to enter and mine upon acquiring surface privileges in the manner set forth in the bill. The title of complainant to the minerals and mining right is subject to the right of the defendant to mine for its own use or for manufacturing purposes within the county of Marquette, free of cost.

3. Prayer for partition of the mineral and mining rights or a sale and division of the proceeds. The bill is signed by complainant by W. P. Healy, its secretary.

The Answer of the P. I. Co.

1. Denies that complainant and defendant are tenants in common of the minerals; avers that defendant is the sole owner in fee of the S. E. ¼ of the N. W. ¼ of sec. 1, in tp. 47 N. R. 26 W. As to all the other lands defendant owns the surface and all the minerals subject only to the right of the plaintiff to an undivided half of all the minerals which have heretofore or may hereafter be discovered thereon, "and this defendant alleges that no minerals have heretofore been discovered upon any of the lands in said bill of complaint, described."

2. Denies that complainant has any interest in the minerals or any right *in presenti* to enter upon the lands for any purpose, or any right to acquire any part of the surface of said lands. On the contrary, the rights of complainant and defendant are as set forth in first paragraph of this answer and not otherwise. The answer is signed, Pioneer Iron Co., by Alexander Maitland, general manager, and was filed July 9, 1889.

758 Mr. SHAULL: I now offer a record of a mortgage, dated Sept. 6, 1871, recorded Sept. 20, 1871, in Liber 3 of Mortgages, pages 336–7. This is a mortgage from Charles T. Harvey and wife to Edward Breitung in the sum of twelve thousand dollars, and covers substantially the same lands covered by the mortgage subsequently given on August 8, 1873, by Chas. T. Harvey and wife to Edward Breitung, as shown at plat No. 13.

Mr. HOYT: We object to it; we do not know anything about it. Same objection as the other.

Mr. SHAULL: I now offer a certified copy of the original articles of incorporation of the Iron Cliffs Co. executed September 14, 1864, properly acknowledged; also a certificate of Wm. A. Ross, county clerk, of Marquette county, showing this to be a correct certified copy of paper marked Exhibit 3-A, and is as follows:

Articles of Association of the Iron Cliffs Company.

The undersigned hereby agree to associate themselves together as a body politic and corporate according to and by virtue of an act of the legislature of the State of Michigan, entitled "An act to authorize the formation of corporations for mining, smelting or manufacturing iron, copper, mineral, coal, silver or other ores or minerals, and for other manufacturing purposes, approved February 5th, 1853, and all acts amendatory thereof, or supplementary thereto, and hereafter with their successors and assigns to be known as the Iron Cliffs Company," and do hereby adopt the following as their articles of agreement and association:

Article first. The said Iron Cliffs Company is formed for the purpose of engaging in and carrying on the business of mining, transporting and selling iron and copper and other ores and for smelting ores and for manufacturing iron with charcoal or other fuel, either in their lands or at some other point in the county of Mar-
759 quette or wherever the company may hereafter deem expedient and also for the purpose of holding real and personal estate suitable for either or all of the above purposes.

Article second. The capital stock of this company shall be five hundred thousand dollars, divided into twenty thousand shares of twenty-five dollars each.

Article third. No capital stock is yet paid in.

Article fourth. The names of the stockholders, their respective residence and the number of shares held by each are as follows:

Names.	Residence.	Number of shares.
William B. Ogden....	Chicago, Ill.....	One thousand.
J. W. Foster.....	Chicago, Ill.....	Four hundred.
Samuel J. Tilden.....	New York city...	Eighteen thousand (18,600) and six hundred.

Article fifth. The office in the State of Michigan of the said corporation shall be in the township of Negaunee, Marquette county, and the county in which their business shall be carried on shall be Marquette county.

Article sixth. The term of existence of this corporation shall be thirty years from and after this fourteenth day of September, eighteen hundred and sixty-four.

Article seventh. The stock, property and affairs of said corporation shall be managed by seven directors until the number of directors shall be changed by a vote of the stockholders at a meeting thereof and such number may be from time to time established by such vote.

Article eighth. The officers of said corporation shall be a president —— and such other officer or officers as the by-laws of the said company shall determine.

Article ninth. The said company shall have their business office out of the State of Michigan at the city of New York and may hold any meeting of their stockholders, or directors, at their office in said city of New York.

760 In witness whereof, the undersigned have hereunto set their hands and seals this fourteenth day of September, A. D. one thousand eight hundred and sixty-four.

W. B. OGDEN. [SEAL.]
J. W. FOSTER. [SEAL.]
SAMUEL J. TILDEN. [SEAL.]

Mr. Shaull then offered the record of a conveyance of which the following is an abstract:

Edward Breitung *et ux.* to Arctic Iron Co.

Quit-claim deed, May 7, 1883; recorded May 14, 1883, in Liber 6, p. 405. Consideration $7,000.

An undivided ½ of all ores and minerals in W. ½ and N. W. ¼ of S. E. ¼ and S. W. ¼ of the N. E. ¼ of sec. 32. Also S. ½ of sec. 31, tp. 48 north range 26 W. Also E. ½ and the W. ½ of N. W. ¼ and the N. E. ¼ of the N. W. ¼ of sec. (1). Also S. ½ of N. E. ¼ and the E. ½ of N. W. 1/*r* and N. W. ¼ of N. E. ¼ and N. W. ¼ of N. W. ¼ of sec. (2). Also N. W. ¼ and N. ½ of N. E. ¼ and S. W. ¼ of N. E. ¼ of sec. (3). Also the N. ½ of sec. 4. Also the whole of sec. 5. Also the N. ½ and the N. ½ of S. E. ¼ and the N. E. ¼ of S. W. ¼ of sec. (6). in tp. 47 north of range 26 west. Also the W. ½ of N. W. ¼ of sec. 6 in tp. 47 N. of R. 25 W. in Marquette county, Michigan.

761 "The intent and meaning of this indenture is to convey to said party of the second part, its successors and assigns forever, all the ore and mineral rights and interests in above de-

scribed lands which were heretofore conveyed to said Edward Breitung by Wm. C. Reynolds of Chicago, Ill., and others, by their deed dated Feb. 1st, 1882, recorded in Liber '6' of Deeds pages 360–1–2, May 1st, 1883."

Mr. HAYDEN: Same objection continued.

Mr. SHAULL: I now offer in evidence a part of the files in this case, being a certificate by Aaron T. Bliss, governor of the State of Michigan, under the great seal of the State, dated Apr. 26, 1901, certifying that he has made a careful search in the files and records in his office, and is unable to find any reports of the commissioner of mineral statistics of the State of Michigan, save and except the published and printed volumes thereof. (Paper received and marked Exhibit B 3.)

Mr. HOYT: Same objection.

Mr. SHAULL: I will state that this certificate has attached thereto, a copy of the published volumes of mineral statistics of the State of Michigan so far as relates to the matters for which they were offered upon the taking of testimony in this case, appearing at page 385 in stenographer's minutes; together with affidavit thereto attached, that a true copy of the extracts thereto attached *were* served upon Mr. George Hayden, solicitor for the defendants in this case, upon the 6th day of June, 1901.

Mr. HOYT: We object to these copies of the reports as incompetent and the whole as irrelevant.

Mr. HANCHETT: I will state on the record that we offer this copy merely to go on the record; the original published volumes are still in evidence and can be used; and are here in court for use; these copies are offered for the convenience of court and counsel.

762 Mr. HOYT: We object to the introduction of the reports, as attempting to prove title by the commissioner of mineral statistics.

This certificate and affidavit and a copy of the published volumes of mineral statistics are elsewhere set forth at length in this record.

Mr. SHAULL: I now offer in evidence a certificate from the secretary of the State of Michigan, dated March 28, 1901, by which he certifies that the Pioneer Iron Company filed in his office an annual report for each of the years 1858, 1859 and 1860, such reports being filed July 30, 1858; Aug. 1, 1859, and Aug. 4, 1860, respectively; that he has carefully searched the records and files in his office and failed to find any reports by said company for any years other than those set forth; nor does he find any list of stockholders of said company, as required by sec. 3 of act 128 of Public Acts of 1855; being sec. 11364 of Compiled Laws of 1897. Paper received in evidence and marked Complainant's Exhibit C-3.

Mr. HOYT: We object to this as irrelevant and incompetent.

Mr. HAYDEN: We introduce in evidence a certificate of the secretary of state certifying to the amended articles of association of

the Pioneer Iron Company filed in the office of the secretary of state on the 7th day of November, 1890, under the great seal of the State, and attached are the amended articles.

Mr. SHAULL: That is objected to as immaterial and irrelevant.

(Paper received and marked Defendants' Exhibit 1 A, and is as follows:)

Minutes of a special meeting of the PIONEER IRON COMPANY, held at numbers 4 and 5 Mercantile Bank building, in the city of Cleveland, county of Cuyahoga, State of Ohio, on Saturday, the
763 25th day of October, A. D. 1890, at 11:30 o'clock a. m. of said day, by consent of all the stockholders of said company, all of the stockholders being personally present at said meeting and consenting thereto, as shown in the annexed written consent and waiver of notice, signed by all of said stockholders.

Consent and Waiver of Notice of Meeting.

Numbers 4 and 5 Mercantile Bank building.

CLEVELAND, OHIO, *October 25th*, 1890.

Know all men by these presents, that whereas, the capital stock of the Pioneer Iron Company, a corporation duly organized and existing under the laws of the State of Michigan, consists of five thousand (5,000) shares of the par value of twenty-five dollars each, and,

Whereas, said entire capital stock is owned as follows, to-wit:

W. G. Mather.....	of Cleveland, Ohio.....	10 shares
J. H. Wade, Jr.....	of Cleveland, Ohio	10 shares
Fred A. Morse	of Cleveland, Ohio.....	10 shares
Selah Chamberlain	of Cleveland, Ohio.....	10 shares
James H. Hoyt	of Cleveland, Ohio.....	10 shares
J. H. Sheadle.....	of Cleveland, Ohio.....	10 shares
W. G. Mather, trustee.....	of Cleveland, Ohio.....	4930 shares
Alexander Maitland..	of Negaunee, Mich.....	10 shares

Now, we the undersigned owning all of the capital stock of said The Pioneer Iron Company, hereby consent to the holding of a special meeting of the stockholders of said company at Nos. 4 and 5 Mercantile Bank building in the city of Cleveland, county of Cuyahoga, State of Ohio, on the 25th day of October, A. D. 1890, at 11:30
764 o'clock a. m. of said day, and hereby expressly waive the serving or publication of any or all notices of such meeting, and expressly agree to be bound by the action of such meeting in all respects as determined by a majority vote of the stock represented.

In witness whereof, we hereunto set our hands and seals this

25th day of October, immediately previous to the holding of such meeting.

WM. G. MATHER.	[SEAL.]
WM. G. MATHER, *Trustee.*	[SEAL.]
ALEXANDER MAITLAND.	[SEAL.]
S. CHAMBERLAIN.	[SEAL.]
FRED A. MORSE.	[SEAL.]
J. H. WADE, JR.	[SEAL.]
J. H. SHEADLE.	[SEAL.]
JAMES H. HOYT.	[SEAL.]

I, the undersigned, secretary of THE PIONEER IRON COMPANY, hereby certify that a special meeting of the stockholders of THE PIONEER IRON COMPANY, a record of which is hereinafter set forth, was duly held, on the 25th day of October, A. D. 1890, at 11:30 o'clock a. m. of said day, at numbers 4 and 5, Mercantile Bank building, Cleveland, Ohio, pursuant to the foregoing consent and waiver of notice, which was signed by all the stockholders of said company.

[SEAL.] JAMES H. HOYT, *Secretary.*

Pursuant to the foregoing consent and waiver of notice duly signed by all of the stockholders of THE PIONEER IRON COMPANY, as above recorded, a special meeting of the stockholders of said THE PIONEER IRON COMPANY was held at numbers 4 and 5 Mercantile Bank building, Cleveland, Ohio, on the 25th day of October, A. D. 1890, at 11:30 o'clock a. m. of said day. The meeting was called to order by Mr. W. G. Mather, president of said company, and Mr. James H. Hoyt, the secretary of said company, acted as secre-
765 tary of the meeting. The roll of stockholders being called by the said secretary of said company, it appeared that the entire capital stock of said company, to-wit, five thousand (5,000) shares, was duly represented at said meeting, each individual stockholder being personally present.

The stockholders present at said meeting were as follows:

W. G. Mather, owning	10 shares, in person
Selah Chamberlain, owning	10 shares, in person
J. H. Wade, Jr., owning	10 shares, in person
James H. Hoyt, owning	10 shares, in person
Fred A. Morse, owning	10 shares, in person
J. H. Sheadle, owning	10 shares, in person
Alexander Maitland, owning	10 shares, in person
W. G. Mather, trustee, owning	4,930 shares, in person

making a total of 5,000 shares, being the entire capital stock of said company.

And thereupon, upon motion of Mr. Chamberlain, duly seconded, Mr. W. G. Mather was unanimously elected president of said special

meeting, and upon the like motion and the like second, Mr. James H. Hoyt was unanimously elected secretary of said meeting.

Mr. Wade then offered the following resolution:

Whereas, a majority of the capital stock, to-wit, all but ten shares thereof, is now owned by persons residing in the city of Cleveland, State of Ohio, and it will be more convenient to have the business office of said company, outside of the State of Michigan, located in said city of Cleveland, State of Ohio;

Now be it resolved, that article V of the articles of association of this company shall be amended so as to read as follows:

766 "Article V.

The business office of this corporation, outside of the State of Michigan, is located in the city of Cleveland, county of Cuyahoga, State of Ohio, and the office for the transaction of its business within the State of Michigan is located in the city of Negaunee, in the county of Marquette.

And be it further resolved, that the president and secretary of this company be and they are hereby authorized to execute, acknowledge and deliver, as required by law, an amendment to the articles of association of this company, and send the same for record to the secretary of state of Michigan, and to the county clerk of Marquette county, as required by law.

Which resolution, being duly seconded by Mr. Maitland, was then unanimously adopted.

There being no further business to come before the meeting, the same adjourned *sine die*.

[SEAL.] JAMES H. HOYT, *Secretary*.

STATE OF OHIO, } ss:
Cuyahoga County, }

I, James H. Hoyt, secretary of the PIONEER IRON COMPANY, and also secretary of the special meeting of the stockholders of said company held by consent at numbers 4 and 5 Mercantile Bank building, Cleveland, Ohio, on the 25th day of October, A. D. 1890, at 11:30 o'clock a. m. of said day, do hereby certify that the foregoing is a full, complete and correct copy of the proceedings of said stockholders' meeting held as aforesaid, and that the amendment to the articles of association of THE PIONEER IRON COMPANY hereto attached and duly executed by the president and secretary of said com-

767 pany is and was the amendment to the articles of association presented at said special meeting of stockholders and unanimously adopted by a vote of the entire capital stock of said company.

[SEAL.] JAMES H. HOYT,
Secretary of the Pioneer Iron Company and Secretary of the Special Meeting of Stockholders of said Company Held on said 25th Day of October, A. D. 1890.

STATE OF OHIO,
Cuyahoga County, } ss:

James H. Hoyt, being duly sworn, deposes and says: That he is the secretary of THE PIONEER IRON COMPANY, and that he was also duly elected secretary and acted as such at the special meeting of the stockholders of THE PIONEER IRON COMPANY held at numbers 4 and 5, Mercantile Bank building, Cleveland, Ohio, on the 25th day of October, A. D. 1890, at 11:30 o'clock a. m. of said day, and that the foregoing is a full, true and correct copy of the proceedings of said meeting.

JAMES H. HOYT.

Sworn to and subscribed before me, by the said James H. Hoyt this 28th day of October A. D. 1890.

[SEAL.] ALTON C. DUSTIN,
Commissioner of Deeds for the State of Michigan, Residing in Cleveland, Ohio.

Amendment to the Articles of Association of the Pioneer Iron Company.

Know all men by these presents, that whereas THE PIONEER IRON COMPANY is a corporation duly organized and existing under and in accordance with the laws of the State of Michigan:

768 And whereas, under and in pursuance of the laws of the State of Michigan, a special meeting of the stockholders of said THE PIONEER IRON COMPANY was duly called and held by consent of all the said stockholders, at numbers 4 and 5 Mercantile Bank building, Cleveland, Ohio, on the 25th day of October, A. D. 1890, at 11.30 o'clock a. m. of said day, at which meeting all of said stockholders were personally present and actually appeared and consented to act at such meeting without notice, and the fact thereof was duly noted upon the record of said meeting;

And whereas, at said meeting a resolution was unanimously passed and adopted, the entire capital stock of said company voting therefor, directing an amendment to article V of the articles of association of said company:

Now therefore, the undersigned, the duly elected and acting president and secretary of said company, do hereby make, sign and acknowledge this amendment to the articles of association of said company in duplicate, to be filed and recorded in accordance with law, and do hereby certify that article V of said articles of association was and is amended at the said stockholders' meeting aforesaid, so as to read as follows:

Article V.

The business office of this corporation, outside of the State of Michigan, is located in the city of Cleveland, county of Cuyahoga, State of Ohio, and the office for the transaction of its business within

the State of Michigan is located at the city of Negaunee, in the county of Marquette.

In witness whereof, the said president and secretary of said company have hereunto set their respective names as such officers respectively, and have caused the corporate seal of the company
769 to be hereto attached, and do hereby certify that the foregoing amendment was duly adopted by a unanimous vote of the capital stock of said company, at said special meeting, and that they, the said president and secretary, have executed the foregoing amendment to the articles of association, duly authorized thereto, as aforesaid, this 28th day of October, A. D. 1890.

WILLIAM G. MATHER,
President of the Pioneer Iron Company.

Attest: JAMES H. HOYT,
Secretary of the Pioneer Iron Company.

[CORPORATE SEAL.]

Signed, sealed and delivered in the presence of

A. C. DUSTIN.
FRANK J. MILLER.

STATE OF OHIO, *Cuyahoga County,* } *ss:*

Before me, A. C. Dustin, a duly appointed and qualified commissioner of deeds of the State of Michigan, residing in the city of Cleveland, county of Cuyahoga and State of Ohio, personally appeared William G. Mather, president, and James H. Hoyt, secretary, of THE PIONEER IRON COMPANY, a corporation organized and existing under the laws of the State of Michigan, to me personally known and known to be such officers respectively, who each severally acknowledged that the execution of the foregoing amendment to the articles of association of said company by them as such officers is their free act and deed and the free act and deed of said corporation, and that they signed, certified to and otherwise executed said instrument in duplicate, being duly authorized thereunto by a unanimous vote of all the stockholders of said company, owning the entire capital stock of said company, who were present and voted at said
770 special meeting of the stockholders of said company, duly held as aforesaid, and the said William G. Mather and James H. Hoyt being by me duly cautioned and sworn, did each depose and say; that at said special meeting, held as aforesaid, five thousand shares of the capital stock of said company, being the entire capital stock thereof, were duly represented by the owners thereof in person, and that all of said stock at said meeting voted in favor of the resolution amending article V of the articles of association of said company, as above set forth, duly authorizing the said Mather,

as president, and the said Hoyt as secretary, to execute, acknowledge and deliver for and on behalf of said company and of each and all of said stockholders, the foregoing amendment of said article in duplicate, as aforesaid.

In witness whereof, I hereunto set my hand and official seal this 28th day of October, A. D. 1890.

ALTON C. DUSTIN,
Commissioner of Deeds for the State of Michigan,
[SEAL.] *Residing in the City of Cleveland, State of Ohio.*

Certificate of the secretary of state attached, certifying the foregoing to be a true and correct exemplified copy of the amended articles of association of the Pioneer Iron Company filed in his office on the 7th day of November, A. D. 1890. Said certificate is dated the 27th day of March, 1901.

Mr. HAYDEN: We also introduce in evidence a certificate of the county clerk of this county in regard to the file in his office entitled "Supplementary articles," etc., of the Pioneer Iron Co., filed April 20, 1901, and the attached articles to which the certificate refers.

This only differs from the original in that it bears the oath
771 of Alex. Maitland, who was the president of the stockholders' meeting. This is sworn to by Alex. Maitland on April 4, 1901.

Mr. SHAULL: That is objected to upon the ground that it is immaterial and irrelevant; that it was made by Alex. Maitland more than ten years after the meeting adjourned at which it was authorized; and that it is a document made and filed since this suit was begun and since the proofs in this case were taken. And as incompetent under the pleadings.

Paper received in evidence and marked Defendants' Exhibit 2 A, and is as follows:

Know all men by these presents, that these are the articles of association of the Pioneer Iron Company, a corporation hereby reorganized under and pursuant to the provisions of an act of the legislature of the State of Michigan, entitled "An act to provide for the reorganization of corporations for mining, smelting and manufacturing iron, copper, silver, mineral, coal and other ores and minerals, the term of existence of which has heretofore expired, or may hereafter expire by limitation, and to fix the duties and liabilities of such renewed corporations." Approved June 8th, 1889, to succeed the Pioneer Iron Company, a corporation heretofore organized under the provision of the act of the legislature of the State of Michigan, approved February 5th, 1853, entitled "An act to authorize the formation of corporations for mining, smelting or manufacturing iron, copper, mineral, coal, silver or other ores or minerals and for other manufacturing purposes and an act supplementary to said last mentioned act also passed by said legislature and approved February

6th, 1855, the term of existence of said last mentioned corporation having expired.

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Article 1.

The purpose for which this reorganized corporation is formed are to hold and own all the property held and owned by the Pioneer Iron Company, whose term of existence has expired as aforesaid, and to be liable for all its debts and liabilities and obligations, and to carry on the business of mining and manufacturing iron ore and producing merchantable iron in the upper peninsula of Michigan.

Article 2.

The capital stock of said company shall be one hundred and twenty-five thousand dollars ($125,000), divided into five thousand shares of the par value of twenty-five dollars ($25.00) each.

Article 3.

There has been paid in on the capital stock aforesaid, one hundred and twenty-five thousand dollars.

Article 4.

The names of the stockholders are as follows and their respective residences and the number of shares held by each is set after the name of each, to-wit:

	Residence.	No. of shares.
John H. Abeel	New York city	10
C. J. Canda	New York city	20
H. Groenemeyer	New York city	10
George M. Miller	Montmoor, N. Y	10
Alexander Maitland	Negaunee, Mich	10
Frederick Hudson	New York city	10
Abram S. Hewitt, surviving trustee	New York city	4,930
Total		5,000 shares

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Article 5.

The business office of this corporation is located in the city of New York, in the State of New York, and the office for the transaction of business within the State of Michigan is located at the city of Negaunee, in the county of Marquette.

Article 6.

The business of this corporation is to be carried on in the county of Marquette and State of Michigan.

Article 7.

The number constituting the board of directors shall be seven.

Article 8.

The term of its existence shall be thirty years from and after the second day of April, A. D. 1887.

In witness whereof, the said Pioneer Iron Company, whose term of existence has expired as aforesaid has in pursuance of a unanimous vote of all the stockholders of said company, at a meeting thereunto duly called and every share of said stock being represented, and every share being in favor thereof, caused these presents to be executed in duplicate by the president and secretary of said stockholders' meeting, thereunto duly authorized as aforesaid, this 4th day of April, A. D. 1901.

ALEXANDER MAITLAND,
President Stockholders' Meeting, Pioneer Iron Company, Held October 7th, 1889.

——— ———,
Secretary Stockholders' Meeting, Pioneer Iron Company, Held October 7, 1889.

774 STATE OF MICHIGAN, } ss:
County of Marquette, }

On this 4th day of April, A. D. 1901, personally appeared before me, the undersigned, a notary public in and for said county, Alexander Maitland, to me known to be the person who subscribed his name to the foregoing instrument; who made oath that he was the president of the meeting of the stockholders of the Pioneer Iron Company, held in the city of Negaunee, Marquette county, Michigan, on the 7th day of October, 1889, for the purpose of voting upon the question of the reorganization of said Pioneer Iron Company, and a copy of the minutes of which said meetings, as certified by the secretary thereof and filed in the office of the secretary of state of the State of Michigan, are attached to the foregoing articles of reorganization so signed by him and made a part thereof; and that annexed thereto is a copy of an affidavit made by him on the 12th day of March, A. D. 1890, the original of which affidavit was duly filed in the office of the secretary of state of the State of Michigan, on the 8th day of April, 1890.

That he signed and executed the foregoing articles of reorganization pursuant to the authority conferred on him by resolution of the stockholders adopted at said meeting, and at the request of the officers of said company acting pursuant thereto, and he acknowledged the same to be the free act and deed of said corporation, and of himself as the president of said stockholders' meeting.

JAMES C. WOOD,
Notary Public in and for the Aforesaid County and State.

775 STATE OF NEW YORK, } ss:
County of New York, City of New York, }

On this — day of April, A. D. 1901, personally appeared before me, the undersigned, a notary public in and for said county, H. Groenemeyer, to me known to be the person who subscribed his name to the foregoing instrument; who made oath that he was the secretary of the meeting of the stockholders of the Pioneer Iron Company, held in the city of Negaunee, Marquette county, Michigan, on the 7th day of October, 1889, for the purpose of voting upon the question of the reorganization of said Pioneer Iron Company, and a copy of the minutes of which said meeting, as certified by him as secretary thereof, and filed in the office of the secretary of state of the State of Michigan, are attached to the foregoing articles of reorganization, so signed by him and made a part thereof.

That he signed and executed the foregoing articles of reorganization pursuant to the authority conferred on him by the resolution of the stockholders adopted at said meeting, and at the request of the officers of said company acting pursuant thereto; and he acknowledged the same to be the free act and deed of said corporation, and of himself as the secretary of said stockholders' meeting.

——— ———,
Notary Public in and for the Aforesaid City, County, and State.

Minutes of a special meeting of the PIONEER IRON COMPANY, held at Negaunee, Michigan, on the seventh day of October, 1889, at ten o'clock in the forenoon, pursuant to a resolution of the board of directors of said Pioneer Iron Company and a notice, of which the following is a copy:

776 "Pioneer Iron Company.

"*To Mr.* ——— ———:

You are hereby notified that a special meeting of the stockholders of the Pioneer Iron Company will be held at the office of the resident director of the company, to-wit., the office of Alexander Maitland, at Negaunee, in the county of Marquette and State of Michigan, on Monday, the seventh day of October, A. D. 1889, at ten o'clock in the forenoon of that day, to consider and act upon the reorganization of the said Pioneer Iron Company under the provisions of an act of the legislature of the State of Michigan, entitled 'An act to provide for the reorganization of corporations for mining, smelting and manufacturing iron, copper, silver, mineral, coal and other ores and minerals, the terms of existence of which has heretofore expired, or may hereafter expire by limitation, and to fix the duties and liabilities of such renewed corporations."

Approved June 8th, 1889. You are requested to be present at such meeting either in person or by proxy.

By order of the board of directors of the Pioneer Iron Company.

C. J. CANDA, *President.*

H. GROENEMEYER, *Secretary.*

September 13th, 1889."

There were present H. Groenemeyer, secretary and owner of ten shares of stock, and Alexander Maitland, owner of ten shares; M. A. Gibbs, proxy for Abram S. Hewitt, surviving trustee, owner of 4,930 shares; A. B. Eldredge, proxy for Charles J. Canda, owner of twenty shares, and for Frederick Hudson, owner of ten shares.

Proof of service of the above notice upon John H. Abeel,
777 at the city of New York, upon H. Groenemeyer at the city of New York, upon Abram S. Hewitt at the city of New York, upon Frederick Hudson at the city of New York, upon George M. Miller at the city of New York, upon C. J. Canda at the city of New York, all upon the 13th day of September, 1889, by their written acceptation of service of a copy of said notice endorsed thereon, and upon Alexander Maitland at the city of Negaunee, Michigan, on the 17th day of September, 1889, by his personal admission of service endorsed upon said duplicate, was presented by the secretary.

The said John H. Abeel, owner of ten shares, was represented by H. Groenemeyer, his proxy thereunto duly authorized by a power of attorney; C. J. Canda, owner of twenty shares, was represented by A. B. Eldredge, his proxy, being thereunto duly authorized by a power of attorney; George M. Miller as represented by Alexander Maitland, his proxy thereunto duly authorized by a power of attorney; Frederick Hudson, owner of ten shares, was represented by A. B. Eldredge, his proxy thereunto duly authorized by a power of attorney; Abram S. Hewitt, surviving trustee, owner of 4,930 shares, was represented by M. A. Gibbs, his proxy thereunto duly authorized by a power of attorney. All the said powers of attorney were duplicates and were in form as follows:

"Know all men by these presents, that I, —— ——, do hereby constitute and appoint —— —— attorney and agent for me in my name, place and stead to vote as my proxy on any and all questions presented at the next meeting of the Pioneer Iron Company to be held at the office of said company at Negaunee, Marquette county, Michigan, on the seventh day of October, 1889, or at any adjou-n-
ment or adjournments thereof, according to the number of
778 votes I should be entitled to vote if then personally present, with full power of substitution, including the question of re-organizing the said Pioneer Iron Company under the provisions of an act of the legislature of the State of Michigan, entitled "An act to provide for the reorganization of corporations for mining, smelting and manufacturing iron, copper, silver, mineral, coal and other

ores or minerals, the terms of existence of which have heretofore expired, or may hereafter expire by limitation, and to fix the duties and liabilities of such renewed corporations." Approved June 8, 1889.

"In witness whereof, I have hereunto set my hand and seal this — day of September, 1889.

——— ———.

Sealed and delivered in presence of"

——— ———.

And thereupon, in the absence of the president, it was moved by A. B. Eldredge and seconded by M. A. Gibbs that Alexander Maitland be selected as chairman of this stockholders' meeting, and the question having been put by the secretary, said Alexander Maitland was unanimously chosen, and thereupon the object of the meeting having been stated by the chairman that the same was called in pursuance of a resolution of the board of directors of said Pioneer Iron Company, it was ordered that the secretary report how many shares of the capital stock was represented at this meeting, and the secretary having examined the books reported that every share of stock, namely five thousand, was represented either in the person of the owner or by his proxy, and thereupon the following resolution was introduced by A. B. Eldredge, namely:

Whereas, the term of existence of this corporation has heretofore expired, and whereas, by the provisions of an act of the legislature of the State of Michigan, entitled, 'An act to provide for the reorganization of corporations for mining, smelting and manu-
779 facturing iron, copper, silver, mineral, coal and other ores and minerals, the term of existence of which has heretofore expired or may hereafter expire by limitation, and to fix the duties and liabilities of such renewed corporations." Approved June 8th, 1889, this corporation is authorized to direct the continuance of its corporate existence for a term not exceeding thirty years from the expiration of its former term;

Be it resolved, That the stockholders of the said Pioneer Iron Company hereby direct the continuance of its corporate existence for the period of thirty years from the expiration of its former term, and the president and secretary of this company are hereby authorized and directed to take such steps as may be necessary under said act of the legislature to procure the reorganization of this company," and thereupon the adoption of the said resolution having been moved by A. B. Eldredge and seconded by M. A. Gibbs, John H. Abeel, by his attorney, H. Groenemeyer, whose proxy *as* duly filed with the secretary, voted ten shares in the affirmative; C. J. Canda, by his attorney, A. B. Eldredge, whose proxy was duly filed with the secretary, voted twenty shares in the affirmative; George M. Miller, by his attorney, Alexander Maitland, whose proxy was duly filed with the secretary, voted ten shares in the affirmative; Frederick Hudson, by his attorney, A. B. Eldredge, whose proxy was

duly filed with the secretary, voted ten shares in the affirmative; Abram S. Hewitt, by his attorney, M. A. Gibbs, whose proxy was duly filed with the secretary, voted forty-nine hundred and thirty shares in the affirmative; H. Groenemeyer voted ten shares in the affirmative; and Alexander Maitland voted ten shares in the affirmative, being five thousand shares, and thereupon every share of the capital stock of said company being represented at said meeting, and all voting in the affirmative, the chairman declared the resolution adopted.

780 There being no further business to come before the meeting, the same adjourned *sine die*.

H. GROENEMEYER, *Secretary.*

STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, H. Groenemeyer, secretary of the Pioneer Iron Company, hereby certify that the foregoing is a full and correct copy of the proceedings of a stockholders' meeting of said Pioneer Iron Company held at the city of Negaunee, in the State of Michigan, on the 7th day of October, A. D. 1889.

[SEAL.]

H. GROENEMEYER,
Secretary Pioneer Iron Company.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

H. Groenemeyer, being duly sworn, deposes and says that he is secretary of the Pioneer Iron Company, and that the foregoing is a true, full and correct copy of the proceedings of a meeting of the stockholders of said Pioneer Iron Company held at the city of Negaunee, in the State of Michigan, on the 7th day of October, A. D. 1889.

Subscribed and sworn before me this 18th day of October, A. D. 1889.

[SEAL.]

JOHN RANKIN,
Commissioner for Michigan, Residing in New York City, 11 *Pine Street, N. Y.*

STATE OF MICHIGAN, }
County of Marquette, } *ss:*

Alexander Maitland being duly sworn, deposes and says
781 that he resides at Negaunee in said county and that for the ten years last past he has been the general manager of the Pioneer Iron Company, a corporation originally organized under the provisions of an act of the legislature of the State of Michigan entitled "An act to authorize the formation of corporations for mining, smelting or manufacturing iron, copper, mineral, coal, silver and other ores or minerals and for other manufacturing purposes." Approved February 5th, 1853.

Deponent further says that during nearly if not all of the time for the past ten years he has been a director of said company.

That the business of said corporation has not been wound up nor its property sold pursuant to the voluntary action of its stockholders or of any court of competent jurisdiction.

That said corporation has never ceased to carry on the business for which it was organized. That frequent meetings of its stockholders and of its directors have been held.

That the Pioneer furnace owned by said company has been constantly operated in the manufacture of pig iron at the city of Negaunee under an arrangement with the Iron Cliffs Company and is still so operated.

That for several years last past much of the land of said Pioneer Iron Company has been operated in exploring for and mining iron ore under leases made by said Pioneer Company with various parties and corporations.

That during the years 1886 and 1887 the said Pioneer Iron Company operated a mine known as the Pioneer mine and located on the northwest quarter of the southwest quarter of section four, township forty-seven, range twenty-six west, in Marquette county, said land being owned by said Pioneer Company and said Pioneer Company removed from said Pioneer mine about fifteen thousand tons of iron ore when the mine apparently became exhausted,
782 but said Pioneer Iron Company continued its mining operations for many months for the purpose of discovering more ore.

The purpose for which said corporation was organized as stated in its original articles of association was to "procure" a suitable location for a manufactory and lands to furnish coaling facilities therefor in the upper peninsula of the State of Michigan and work the same for the production of merchantable iron and such other use of their lands as the company may hereafter determine and adopt.

And further deponent says not.

ALEXANDER MAITLAND.

Subscribed and sworn to before me this 28th day of March, 1890.

AUBREY D. GARNER,

[SEAL.] *Notary Public in and for said County.*

(Certificate of county clerk attached, certifying that it is a correct transcript of the original articles of association on file in his office, and that said articles of association were filed and recorded in his office the 20th day of April, 1901. Said certificate is dated the 20th day of April, 1901.)

Mr. HAYDEN: We introduce in evidence a certificate of the secretary of state of this State, dated April 6, 1901, certifying to the supplementary reorganization papers of the Pioneer Iron Co., filed in the office of the secretary of state on April 6, 1901.

Mr. HANCHETT: They appear upon their face to be an attempted reorganization as of that date.

Mr. SHAULL: That is objected to upon the ground that it is immaterial and irrelevant, and is a paper filed in this case—made
783 and filed in the secretary of state's office since the proofs in this case were closed, and it is incompetent and irrelevant under the pleadings.

There is the further objection that they are unauthorized by the laws of this State.

Paper received in evidence and marked Exhibit 3a.

The supplementary reorganization papers so certified are an exact copy of the supplementary articles of the Pioneer Iron Co. appearing in this record as Exhibit 2 A. Said Defendants' Exhibit 3 A is certified by the secretary of state to be a true and correct exemplified copy of the supplementary reorganization papers of the Pioneer Iron Company filed in his office on the 6th day of April, A. D. 1901. Said certificate is dated the 6th day of April, 1901.

Mr. HAYDEN: We introduce in evidence the certificate of the county clerk certifying to the filing in his office of the amended and perfected articles of association of the Pioneer Iron Company on the 9th day of April, 1901.

Mr. HANCHETT: That is, filing the same in the clerk's office?

Mr. HAYDEN: I think this is the same paper. It is offered with all the papers attached, the same as the other.

Mr. SHAULL: The same objections are made to that paper as to the last.

Paper received in evidence and marked Defendant's Exhibit 4 A, and is as follows:

"Know all men by these presents," that these are the amended and perfected articles of association of the Pioneer Iron Company, a corporation organized under an act of the legislature of the State of Michigan, entitled: "An act to authorize the formation of corporations for mining, smelting or manufacturing iron, copper, mineral, coal, silver or other ores or minerals and for other manufacturing purposes," approved February
784 5, 1853, and all acts supplementary thereto, amendatory or in revision thereof; including an act of the legislature of the State of Michigan, entitled: "An act to revise the laws providing for the incorporation of companies for mining, smelting or manufacturing iron, copper, silver, mineral coal and other ores or minerals, and to fix the duties and liabilities of such corporations," being act 113 of the Laws of 1877, and all acts supplementary thereto, amendatory or in revision thereof, said corporation having been heretofore reorganized under and pursuant to the provisions of an act of the legislature of the State of Michigan, entitled: "An act to provide for the reorganization of corporations for mining, smelting and manufacturing iron, copper, silver, mineral coal and other ores and minerals, the term and existence of which has heretofore expired,

or may hereafter expire by limitation, and to fix the duties and liabilities of such renewed corporations, approved June 8, 1889; and also under said act as amended by act No. 60 of the session of the legislature of the State of Michigan of 1899, and approved May 2, 1899. These amended and perfected articles of association being executed and the corporate existence and term of said The Pioneer Iron Company having been and being hereby continued in accordance with the provisions of all of the laws of the State of Michigan applicable thereto.

Article 1.

The purpose for which this corporation has been and is in existence are, to hold and own all the property, rights, franchises, privileges and estate held and owned by said The Pioneer Iron Company, and to be liable for all its duties, liabilities, and obligations, all as fully as if the former corporate term of said Pioneer Iron Company had not expired; and for the purpose of procuring a suitable location for a manufactory and lands to furnish coaling facilities therefor, in the upper peninsula of the State of Michigan, and working the same for the production of merchantable iron and such other uses of their lands as the company may hereafter determine and adopt, and to carry on the business of mining iron ore in aid of the purposes aforesaid.

Article 2.

The capital stock of said company shall be one hundred and twenty-five thousand dollars ($125,000), divided into five thousand (5,000) shares of the par value of $25 each.

Article 3.

There has been paid in on the capital stock of said company one hundred and twenty-five thousand dollars ($125,000).

Article 4.

The names of the stockholders of said company, and their respective places of residence, and the number of shares of stock held by each, set opposite their respective names, are as follows:

	Shares.
William G. Mather, trustee, Cleveland, Ohio	3,930
E. V. Hale, Cleveland, Ohio	950
George A. Garretson, Cleveland, Ohio	50
Peter White, Marquette, Mich	10
Fred A. Morse, Cleveland, Ohio	10
E. R. Perkins, Wickliffe, Ohio	10
J. H. Sheadle, Cleveland, Ohio	10
J. H. Hoyt, Cleveland, Ohio	10
J. H. McBride, Cleveland, Ohio	10
William G. Mather, Cleveland, Ohio	10
Total	5,000

786 Article 5.

The business office of this corporation is located in the city of Cleveland, in the State of Ohio, and the office for the transaction of business in the State of Michigan is located in the city of Negaunee, in the county of Marquette, State of Michigan.

Article 6.

The business of this corporation is to be carried on in the county of Marquette, in the State of Michigan.

Article 7.

The number constituting the board of directors shall be seven.

Article 8.

The term of existence of this corporation shall be thirty (30) years from and after the second day of April, A. D. 1887.

In witness whereof, the said The Pioneer Iron Company has, in pursuance of the unanimous vote of all the capital stock of the company, at a special meeting of the stockholders of the company duly called and held, at which all of the stockholders of said company were personally present or legally represented by proxy, and at which meeting every share of stock of said company was voted in favor of directing the making of these amended and perfected articles of association, has caused these presents to be made, signed and acknowledged in duplicate by the president and secretary of said stockholders' meeting, who are also respectively the president and secretary of this company, this 4th day of April, A. D. 1901.

THE PIONEER IRON COMPANY,

[CORPORATE SEAL.] By GEORGE A. GARRETSON,

787 *President of the Company and President of said Stockholders' Meeting Held on the Third Day of April, A. D.* 1901.

Attest:

EDWIN V. VALE,

Secretary of the Company and Secretary of the Stockholders' Meeting Held on the Third Day of April, A. D. 1901.

CUYAHOGA COUNTY, } ss:
The State of Ohio, }

On this 4th day of April, A. D. 1901, personally appeared before me, the undersigned, a notary public in and for said county, George A. Garretson, to me personally known and known to be the person who executed the foregoing instrument, who made oath that he is the president of the Pioneer Iron Company, and that he was also

duly elected and acted as the president of the special meeting of stockholders of said company, called and held at the office of said company in Cleveland, Ohio, on the third day of April, 1901, at which meeting, by unanimous vote of all the stockholders of said company, the president and secretary of said meeting were directed to make, sign and acknowledge the foregoing amended and perfected articles of association of said Pioneer Iron Company.

That the foregoing articles of association, pursuant to the direction of said stockholders, were made, signed and are hereby acknowledged by him, and he accordingly acknowledges that he signed and executed the same for the uses and purposes therein set forth, as the free act and deed of said corporation, and of himself as the president of said stockholders' meeting, and as the president of said company.

788 In testimony whereof, I hereunto set my hand and seal at Cleveland, Ohio, this 4th day of April, A. D. 1901.

[NOTARIAL SEAL.] JOHN M. GARFIELD,
Notary Public in and for Cuyahoga County, State of Ohio.

THE STATE OF OHIO, } ss:
Cuyahoga County, }

On this 4th day of April, A. D. 1901, personally appeared before me the undersigned, a notary public in and for said county, Edwin V. Hale, who made oath that he is the secretary of the Pioneer Iron Company, and that he was also the duly elected secretary of the special meeting of stockholders of said company, called and held at the office of said company in Cleveland, Ohio, on the third day of April, A. D. 1901, and acted as such secretary of said meeting; at which meeting, by unanimous vote of all the stockholders of said company, the president and secretary of said meeting were directed to make, sign and acknowledge the foregoing amended and perfected articles of association of the Pioneer Iron Company.

That pursuant to the direction of said stockholders, he duly signed and executed the same, and he acknowledged that he signed the foregoing instrument for the uses and purposes therein set forth, as the free act and deed of said corporation, and of himself as the secretary of said stockholders' meeting.

In testimony whereof, I hereunto set my hand and seal at Cleveland, Ohio, this 4th day of April, A. D. 1901.

[NOTARIAL SEAL.] JOHN M. GARFIELD,
Notary Public in and for Cuyahoga County, State of Ohio.

Minutes of a special meeting of the stockholders of the Pioneer Iron Company, duly called and held at the office of the company, at room 2, Mercantile Bank building, Cleveland, Ohio, on the third day of April, 1901, at three o'clock p. m. of said day, pursuant to a resolution directing the calling of said meeting, duly adopted by the board of directors of said company, and of a notice duly given to and served upon each and all of the stockholders of said company.

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The meeting was called to order by George A. Garretson, the president of the company.

On motion, duly seconded, Mr. George A. Garretson was unanimously elected the president of said special meeting of the stockholders of the company, and continued in the chair, acting as such.

On motion, duly seconded, Mr. Edwin V. Hale, the secretary of the company, was unanimously elected secretary of the special meeting of the stockholders, and acted as such.

The secretary thereupon called the roll of stockholders and presented to the meeting a waiver of notice of said meeting, and consent to the holding thereof, signed by all the stockholders of the company.

The waiver of notice, signed by each and all of the stockholders in identical form, is as follows:

"The undersigned, a stockholder of the Pioneer Iron Company, does hereby waive all notice by publication and otherwise, of a special meeting of the stockholders of said company, to be held at room 2, Mercantile Bank building, Cleveland, Ohio, on the third day of April, 1901, at 3 o'clock p. m., for the purpose of amending and perfecting articles of association of the Pioneer Iron Company, as reorganized, and for perfecting or directing the execution of new articles of reorganization, and for the transaction of any and all other business which may lawfully be done by said stockholders in a regular or general meeting, and hereby consent to the holding of said meeting."

The waiver of notice, signed by all of the stockholders, in the above form, was thereupon filed with the secretary.

790

The roll of stockholders being called, the following stockholders were found to be present in person or by duly authorized proxy, to-wit:

	Shares.
William G. Mather, trustee (J. H. Hoyt, proxy) owning.....	3,930
E. V. Hale (in person) owning.....	950
George A. Garretson (in person) owning..... ...	50
Peter White (J. H. Hoyt, proxy), owning.....	10
Fred A. Morse (in person), owning.....	10
E. R. Perkins (J. H. Hoyt, proxy), owning.....	10
J. H. Sheadle (in person), owning.....	10

J. H. Hoyt (in person), owning	10
J. H. McBride (in person), owning	10
William G. Mather (J. H. Hoyt, proxy), owning	10
Total	5,000

To-wit, all the capital stock of the company.

The proxies of all the stockholders represented at the meeting by proxy, as aforesaid, were then filed with the secretary, said proxies were all in identical form, and a copy thereof is as follows:

Know all men by these present, that I, the undersigned, have made, constituted and appointed, and hereby do make, constitute and appoint J. H. Hoyt or William G. Mather, or either of them, or any one whom they or either of them may appoint instead, my proxy and attorney for me and in my name, place and stead to vote at a special meeting of the stockholders of the Pioneer Iron Company, to be held at room 2, Mercantile Bank building, Cleveland, Ohio, on the third day of April, 1901, at three o'clock p. m., or any adjournment thereof, for the purpose of amending the articles of reorganization of said The Pioneer Iron Company, or perfecting or directing the execution of new articles of reorganization of said company, and on any
791 and all other questions which may lawfully come before said meeting, the same as at any regular or general meeting of stockholders of said company, according to the number of votes I should be entitled to vote if personally present, hereby ratifying and approving all that my said attorney may do by virtue hereof.

In witness whereof, I hereunto set my hand — seal, this — day of March, 1901.

—— ——. [SEAL.]

In presence of

—— ——.

Thereupon the president of the meeting having stated the purposes thereof, the following resolution was offered by Mr. James H. Hoyt:

Resolution.

Whereas, the term of existence of the Pioneer Iron Company under its orginal articles of association expired on the 2nd day of April, 1887, as such term of existence was fixed in said original articles, but the said Pioneer Iron Company remained thereafter in existence, and continued to do business, and

Whereas, the stockholders of this company, at a meeting thereof duly called and held on the 7th day of October, 1889, at which all the stock of the company was represented, adopted a resolution directing the continuance in existence of said The Pioneer Iron Company for the further period of thirty years from and after said 2nd

day of April, 1887, pursuant to the provisions of an act of the legislature of the State of Michigan, to-wit: act No. 142, entitled: "An act to provide for the reorganization of corporations for mining, smelting and manufacturing iron, copper, silver, mineral coal and other ores and minerals, the term of existence of which has
792 heretofore expired, or may hereafter expire by limitation, and to fix the duties and liabilities of such renewed corporations;" and, in said resolution directed the officers of the said The Pioneer Iron Company to take such steps as were necessary under said act to procure the reorganization of the company, and

Whereas, pursuant to the authority of said resolution, the officers of said company made and filed in the office of the secretary of state of the State of Michigan articles of association for the continuance in existence of said The Pioneer Iron Company, the same having been filed in the office of the secretary of state of the State of Michigan on or about April 8th, 1890, and in the office of the county clerk of Marquette county, Michigan, on or about the same time; but

Whereas, in the execution and filing of which articles, the direction and requirements of the said resolution of the stockholders of said company were not so explicitly carried out as to conform in every detail to the requirements of said act No. 142; but certain omissions in said articles occurred and irregularity in filing them happened, not fraudulently intended, but due simply to oversight, and

Whereas, said The Pioneer Iron Company has continued in existence during all of said time since said date of April 2nd, 1887, and has amended said defective articles of reorganization, and has continued doing business on the faith thereof, and the stockholders of said company have only lately had called to their attention said omissions and irregularities, and the said corporation has constantly continued to transact the business for which it was organized down to this date, and has in all respects existed, and is now existing as reorganized the same as under its original articles of association,

793 *Now, therefore, be it resolved*, That, in order to save any possible question as to the correct action of the officers of said company and the officers of said stockholders' meeting, of October 7th, 1889; and in order to cure all omissions and all irregularities in the filing of said renewal articles of association, and by virtue of the provisions of the act under which said corporation has continued to exist, to-wit: act No. 113 of the legislature of the State of Michigan of the Public Acts of 1877, the same being a revision of the act of said legislature approved February 5, 1853, under which this corporation was originally organized, and also under and by virtue of the provisions of act No. 142 of the legislature of the State of Michigan of the Public Acts of 1889; and also under said last named act, as amended by act No. 60 of the session of the legislature of Michigan of the year 1899, entitled: "An act to amend section 1 of act

142 of the Public Acts of 1889," etc.; said acts as amended being sections 7035 and 7036 of the Compiled Laws of 1897;

That the stockholders of said The Pioneer Iron Company, reserving to themselves and to the corporation all rights conferred on them and on said corporation by all curative provisions of the laws of the State of Michigan heretofore enacted and now in force, applicable thereto, again direct the continuance of the corporate existence of the Pioneer Iron Company for the period of thirty years from and after the expiration of its former term, and

Be it further resolved, That the president and secretary of this meeting, who are also the president and secretary of the company, be, and they are hereby authorized and directed to make, sign and acknowledge in duplicate, amended and perfected articles of
794 association of the Pioneer Iron Company, for the purpose of carrying into effect this resolution, and they are further directed to cause one duplicate original of the same to be filed in the office of the secretary of state of the State of Michigan, and one duplicate original thereof in the office of the county clerk of the county of Marquette, for record, and

Be it further resolved, That a copy of the proceedings of this meeting shall be duly certified by the secretary of this meeting, and the secretary of the company, in duplicate, and attached to the amended and perfected articles of association of said Pioneer Iron Company, so to be made, executed, acknowledged, filed and recorded, as aforesaid."

Mr. Hoyt then moved the adoption of said resolution, which motion was seconded by Mr. Fred A. Morse.

Thereupon the president of the meeting directed the roll of the stockholders to be called, and a vote to be taken upon the adoption of said resolution. A vote was then taken and the entire capital stock of the company was thereupon duly voted in favor of the adoption of the said resolution, as follows:

	Shares.
By William G. Mather, trustee, by his duly authorized proxy..	3,930
By William G. Mather, by his duly authorized proxy.....	10
By Peter White, by his duly authorized proxy.....	10
By E. R. Perkins, by his duly authorized proxy	10
By J. H. McBride (in person)..... ...	10
By Edwin V. Hale (in person).....	950
By George A. Garretson (in person)	50
By J. H. Sheadle (in person)	10
By J. H. Hoyt (in person).....	10
By Fred A. Morse (in person).....	10
Total	5,000

795 Having been voted in favor of the motion, and no votes having been cast against it. The secretary thereupon announced that the total capital stock of the Pioneer Iron Company had been

voted in favor of the resolution. Thereupon the president of the meeting declared the resolution unanimously adopted.

Mr. J. H. Hoyt thereupon submitted to the meeting a form of amended and perfected articles of association of the Pioneer Iron Company, which were in the words and figures following, to-wit:

"Know all men by these presents," that these are the amended and perfected articles of association of the Pioneer Iron Company, a corporation organized under an act of the legislature of the State of Michigan, entitled: "An act to authorize the formation of corporations for mining, smelting and manufacturing iron, copper, mineral coal, silver or other ores or minerals, and for other manufacturing purposes," approved February 5, 1853; and all acts supplementary thereto, amendatory or in revision thereof; including an act of the legislature of the State of Michigan, entitled: "An act to review the laws providing for the incorporation of companies for mining, smelting or manufacturing iron, copper, silver, mineral coal and other ores or minerals, and to fix the duties and liabilities of such corporations," being act 113 of the Laws of 1877, and all acts supplementary thereto, amendatory or in revision thereof; said corporation having been heretofore reorganized under and pursuant to the provisions of an act of the legislature of the State of Michigan, entitled: "An act to provide for the reorganization of corporations for mining, smelting and manufacturing iron, copper, silver, mineral coal and other ores and minerals, the term and existence of which has hereto-
796 fore expired, or may hereafter expire by limitation, and to fix the duties and liabilities of such renewed corporations." Approved June 8, 1889; and also under said act as amended by act No. 60 of the session of the legislature of the State of Michigan of 1899, and approved May 2, 1899.

These amended and perfected articles of association being executed and the corporate existence and term of said The Pioneer Iron Company having been and being hereby continued in accordance with the provisions of all of the laws of the State of Michigan applicable thereto.

Article 1.

The purpose- for which this corporation has been and is in existence are, to hold and own all the property, rights, franchises, privileges and estate held and owned by said The Pioneer Iron Company, and to be liable for all its duties, liabilit-es and obligations, all as fully as if the former corporate term of said The Pioneer Iron Company had not expired; and for the purpose of procuring a suitable location for a manufactory and lands to furnish coaling facilities therefor, in the upper peninsula of the State of Michigan, and working the same for the production of merchantable iron and such other uses of their lands as the company may hereafter determine and adopt, and to carry on the business of mining iron ore in aid of the purposes aforesaid.

Article 2.

The capital stock of said company shall be one hundred and twenty-five thousand dollars ($125,000), divided into five thousand (5,000) shares of the par value of $25 each.

Article 3.

There has been paid in on the capital stock of said company one hundred and twenty-five thousand dollars ($125,000).

797 Article 4.

The names of the stockholders of said company, and their respective places of residence and the number of shares of stock held by each, set opposite their respective names, are as follows:

	Shares.
William G. Mather, trustee, Cleveland, Ohio	3,930
E. V. Hale, Cleveland, Ohio	950
George A. Garretson, Cleveland, Ohio	50
Fred A. Morse, Cleveland, Ohio	10
J. H. Sheadle, Cleveland, Ohio	10
J. H. Hoyt, Cleveland, Ohio	10
J. H. McBride, Cleveland, Ohio	10
William G. Mather, Cleveland, Ohio	10
Peter White, Marquette, Mich	10
E. R. Perkins, Wickliffe, Ohio	10
Total	5,000

Article 5.

The business office of this corporation is located in the city of Cleveland, in the State of Ohio, and the office for the transaction of business in the State of Michigan.

Article 6.

The business of this corporation is to be carried on in the county of Marquette, in the State of Michigan.

Article 7.

The number constituting the board of directors shall be seven.

Article 8.

The term of existence of this corporation shall be thirty (30) years from and after the second day of April, A. D. 1887.

798 In witness whereof, the said Pioneer Iron Company has, in pursuance of the unanimous vote of all the capital stock of the company, at a special meeting of the stockholders of the com-

pany duly called and held, at which all of the stockholders of said company were personally present or legally represented by proxy, and at which meeting every share of stock of said company was voted in favor of directing the making of these amended and perfected articles of association, has caused these presents to be made, signed and acknowledged in duplicate by the president and secretary of said stockholders' meeting, who are also respectively the president and secretary of the company, this — day of April, A. D. 1901.

THE PIONEER IRON COMPANY,

—— ——,

President of the Company and President of said Stockholders' Meeting, Held on the 3rd Day of April, A. D. 1901.

Attest: —— ——,

Secretary of the Company and Secretary of the Stockholders' Meeting, Held on the 3rd Day of April, A. D. 1901.

THE STATE OF OHIO, *Cuyahoga County,* } ss:

On this — day of April, A. D. 1901, personally appeared before me, the undersigned, a notary public in and for said county, George A. Garretson, to me personally known, and known to be the person who executed the foregoing instrument, who made oath that he is the president of the Pioneer Iron Company, and that he was also duly elected and acted as president of the special meeting of stockholders of said company, called and held at the office of said company in Cleveland, Ohio, on the third day of April, 1901, at
799 which meeting, by unanimous vote of all the stockholders of said company, the president and secretary of said meeting were directed to make, sign, and acknowledge the foregoing amended and perfected articles of association of said The Pioneer Iron Company. That the foregoing articles of association, pursuant to the direction of said stockholders, were made, signed and are hereby acknowledged by him, and he accordingly acknowledges that he signed and executed the same for the uses and purposes therein set forth, as the free act and deed of said corporation, and of himself as the president of said stockholders' meeting, and as the president of said company.

In testimony whereof, I hereunto set my hand and seal at Cleveland, Ohio, this — day of April, A. D. 1901.

—— ——,

Notary Public in and for Cuyahoga County, Ohio.

THE STATE OF OHIO, } ss:
Cuyahoga County, }

On this — day of April, 1901, personally appeared before me, the undersigned, a notary public in and for said county and State, Edwin V. Hale, who made oath that he is the secretary of the Pioneer Iron Company and that he was also the duly elected secretary of the special meeting of stockholders of said company, called and held at the office of said company, in Cleveland, Ohio, on the third day of April, A. D. 1901, and acted as such secretary of said meeting; at which meeting, by unanimous vote of all the stockholders of said company, the president and secretary of said meeting were directed to make, sign and acknowledge the foregoing amended and perfected articles of association of the Pioneer Iron Company.

That pursuant to the direction of said stockholders, he duly signed and executed the same, and he acknowledged that he
800 signed the foregoing instrument for the uses and purposes therein set forth, as the free act and deed of said corporation, and of himself as the secretary of said stockholders' meeting.

In testimony whereof, I hereunto set my hand and seal at Cleveland, Ohio, this — day of April, A. D. 1901.

——— ———,
Notary Public in and for Cuyahoga County, State of Ohio.

On motion, duly seconded, the following resolution was then unanimously adopted by a vote of all the stock represented either by the stockholders in person or by proxy at said meeting, to-wit: all the capital stock of said company, amounting to five thousand shares:

Resolved, That the foregoing form of amended and perfected articles of association of the Pioneer Iron Company submitted to this meeting be, and the same hereby are, duly and in all respects adopted as the amended and perfected articles of association of the Pioneer Iron Company, and the president and secretary of this meeting be, and they are hereby duly authorized to make, sign and acknowledge the same in duplicate, and to file the same in the office of the secretary of state of the State of Michigan, and in the office of the county clerk of Marquette county, under and in pursuance of the resolution first adopted by the stockholders of the company at this meeting.

There being no further business to come before the meeting, the meeting then adjourned *sine die*.

GEORGE A. GARRETSON,
President of the Stockholders' Meeting.

Attest: EDWIN V. HALE,
Secretary of the Stockholders' Meeting.

801 CLEVELAND, OHIO, *April 3d*, 1901.

I, the undersigned, being the secretary of the Pioneer Iron Company and also the secretary of the special meeting of stockholders of said company held at the office of said company in Cleveland, Ohio, on the third day of April, 1901, at 3 o'clock p. m. of said day, hereby certify that the foregoing is a full, complete and correct copy of the proceedings of said stockholders' meeting.

In witness whereof, I hereunto set my hand as secretary, and the seal of the company, this 4th day of April, 1901.

[CORPORATE SEAL.] EDWIN V. HALE, *Secretary.*

Cancelled ten cent revenue stamp.

THE STATE OF OHIO, }
Cuyahoga County, } *ss:*

Edwin V. Hale, being duly sworn, deposes and says that he is the secretary of the Pioneer Iron Company; that he was the secretary of the special meeting of the stockholders of said company, called and held at the office of the company, room 2, Mercantile Bank building, Cleveland, Ohio, on the third day of April, 1901, at three o'clock p. m. the minutes and a copy of the proce-dings of which meeting are above set forth. That he kept the minutes of said meeting correctly, and that the foregoing is a full, true and correct copy of the minutes, records and proceedings of said stockholders' meeting, and that he does certify to the same as such.

EDWIN V. HALE.

Sworn to and subscribed before me this 4th day of April, A. D. 1901.

[NOTARIAL SEAL.] JOHN M. GARFIELD,
Notary Public in and for Cuyahoga County, State of Ohio.

802 STATE OF OHIO, }
Cuyahoga County, } *ss:*

William G. Mather, being duly sworn, deposes and says that he resides in the city of Cleveland, State of Ohio, and is vice-president of the Pioneer Iron Company; that, on the second day of April, 1890, he was elected president of said Pioneer Iron Company, and continued, by election each year thereafter, to be the president of said Pioneer Iron Company until the 17th day of April, 1900, at which time George Garretson became the president of said company, and deponent was elected vice-president thereof. That said Pioneer Iron Company is a corporation organized under the laws of the State of Michigan under the provisions of an act of the legislature of that State, entitled "An act to authorize the formation of corporations, for mining, smelting, manufacturing iron, copper, min-

eral, coal, silver and other ores and minerals, and for other manufacturing purposes," approved February 5, 1853.

That the business of said corporation has not been wound up nor is the same in process of winding up, nor its property sold pursuant to the voluntary action of its stockholders or of any competent court of jurisdiction, nor under any act of said State of Michigan; but, on the contrary, as this affiant is informed and believes, ever since the date of its incorporation, and as this affiant knows of his own knowledge, since the second day of April, 1890, said corporation has been engaged in transacting the business for which it was incorporated.

That from the year 1887 and until the year 1898, the Pioneer Iron Company was almost constantly receiving royalties aggregating several thousand dollars in amount, on iron ore mined during that period, in almost every year thereof, from mines operated upon its (the company's) own lands and property, under lease
803 made by the company, and that such a lease is now outstanding and in force with some years yet to run.

That since the second day of April, 1890, (since which period said affiant has been president or vice-president of said corporation, as aforesaid), and at various times said company has operated and now owns and operates a furnace for the manufacture of pig iron in the county of Marquette, and State of Michigan. That during a large part of said period said company has been engaged in the business of selling lots from its plat in the city of Negaunee, which sales have continued almost yearly during said period; that during that period, the company has also at times been engaged in the exploration for iron ore upon its lands and estate in the city of Negaunee, in said county of Marquette, for the purpose upon the discovery of such ore, of mining the same and manufacturing such ore into iron and is now engaged in such explorations.

Deponent further says that said company has annually, since said second day of April, 1890, held meetings of its stockholders for the election of directors, and that the board of directors of said company elected at such stockholders' meetings have annually elected officers of such company who have continued to act as such, and that said board of directors have also frequently held special meetings of said boards, and at all of said meetings business of the company has been transacted.

WM. G. MATHER.

Sworn to before me and subscribed in my presence this 30th day of March, A. D. 1901.

[NOTARIAL SEAL.] JOHN M. GARFIELD,
Notary Public.

804 STATE OF MICHIGAN, } ss:
County of Marquette, }

Alexander Maitland being duly sworn deposes and says that he resides at Negaunee in said county, that for ten years prior to the

first day of January, 1890, he was the general manager of the Pioneer Iron Co., a corporation originally organized under the provisions of an act of the legislature of the State of Michigan, entitled "An act to authorize the formation of corporations for mining, smelting, manufacturing iron, copper, mineral coal, silver and other ores or minerals and for other manufacturing purposes," approved February 5, 1853.

Deponent further says, that during nearly all, if not quite all the time during the said ten years he was a director of said company. That the business of said corporation was not wound up, nor its property sold pursuant to the voluntary action of its stockholders, or of any competent court of jurisdiction, but on the contrary, action was taken in the month of October, 1889, for the reorganization of said corporation under act No. 142 of the Session Laws of the legislature of the State of Michigan, for the year 1889. That said corporation during said ten years never ceased to carry on the business for which it was organized; that frequent meetings of its stockholders and of its directors were held during said period. That subsequently to said reorganization, effected by a meeting of the stockholders of said company in September, 1889, the said company continued to carry on business, and did so as long as deponent remained manager of said company, to the knowledge of this deponent. That the Pioneer furnace, owned by said company, was constantly in operation during said ten years prior to January 1st, 1900, in the manufacture of pig iron in the city of Negaunee, under an arrangement
805 with the Iron Cliffs Co., and continued to be so operated for several years after said first day of January, A. D. 1890.

That for several years prior to January 1st, A. D. 1890, and during said ten year period, much of the land of said Pioneer Iron Co. was operated in explorations for and the mining of iron ore under leases made by said company with various parties and corporations.

That during the years 1886 and 1887 the said Pioneer Iron Co. operated a mine known as the Pioneer mine, located on the northwest quarter of the southwest quarter of section four (4) township forty-seven (47) range twenty-six (26) west, in Marquette county, said land being then owned by said Pioneer Iron Company, and that said Pioneer Iron Company, during that time removed from said Pioneer mine about 15,000 tons of iron ore, when the mine apparently became exhausted, but said Pioneer Iron Co. continued its operations many months thereafter, for the purpose of discovering more ore.

That deponent knows the purposes for which said corporation was organized which, as stated in its original articles of association, were to procure a suitable location for a manufactory and lands to furnish coaling facilities therefor in the upper peninsula of the State of Michigan, and work the same for the production of merchantable iron and such other use of their lands as the company might thereafter determine and adopt, and further deponent says not.

[NOTARIAL SEAL.] ALEXANDER MAITLAND.

Subscribed and sworn to before me this 25th day of March, A. D. 1901.

THOMAS C. YATES,
Notary Public in and for said County of Marquette.

(10 cent revenue stamp.)

806 (Certificate of county clerk attached certifying that the foregoing is a correct transcript of the original amended and perfected articles of association of the Pioneer Iron Co. on file in his office as county clerk of Marquette county, Mich., and that said original amended and perfected articles of association of the Pioneer Iron Co. were filed in his office on the 9th day of April, A. D. 1901, at 6 o'clock p. m. Said certificate is dated the 11th day of April, A. D. 1901.)

Mr. HAYDEN: I now introduce the amended and perfected articles of association of the Pioneer Iron Co., as filed in the office of the secretary of state, it being a duplicate of the last article filed in the clerk's office, with the certificate of the secretary of state dated on the 8th day of April, 1901, that these papers were filed on the 8th day of April, 1901, with all the papers attached.

Mr. SHAULL: That is objected to upon all the grounds mentioned in the objection to the last paper dated the 6th of April; and that the authority under which it was executed, as appears upon its face, did not authorize its execution.

Judge BROWN: The same objection should apply to the other.

Mr. HANCHETT: The objection should be made to all these papers that they are incompetent, immaterial and irrelevant to this case.

Paper received in evidence and marked Defendants' Exhibit 5 A.

The amended and perfected articles of association of the Pioneer Iron Company, so certified, are an exact copy of the amended and perfected articles of association appearing in this record as Exhibit 4 A. Said Defendants' Exhibit 5 A is certified by the secretary of state to be a true and correct exemplified copy of the
807 amended articles of association of the Pioneer Iron Company, filed in his office on the 8th day of April, A. D. 1901, said certificate is dated the 8th day of April, A. D. 1901.

Mr. HAYDEN: I also offer the two certificates of the secretary of state, one dated April 6, 1901, certifying to the filing in his office on the 6th day of April, 1901, of the supplementary reorganization papers of the Pioneer Iron Co. and certifying to their record; the other dated April 8, 1901, certifying to the filing in his office on the 8th day of April, 1901, of the amended articles of association of the Pioneer Iron Co. and duly recorded.

Papers received in evidence and are as follows:

MICHIGAN,
Department of State, Lansing, } ss:

I, Charles S. Pierce, deputy secretary of state of the State of Michigan, do hereby certify that on the sixth day of April in the year nineteen hundred and one supplementary reorganization papers of the Pioneer Iron Company were duly filed and recorded in this office agreeable to the provisions of law.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State at Lansing, this sixth day of April, in the year of our Lord nineteen hundred and one.

[SEAL.]

CHARLES S. PIERCE,
Deputy Secretary of State.

MICHIGAN,
Dedartment of State, Lansing, } ss:

I, Charles S. Pierce, deputy secretary of state of the State of Michigan, do hereby certify that on the eighth day of April in the year nineteen hundred and one amended articles of association of
808 the Pioneer Iron Company were duly filed and recorded in this office agreeable to the provisions of law.

In testimony whereof, I have hereunto set my hand and affixed the great seal of the State at Lansing, this eighth day of April, in the year of our Lord nineteen hundred and one.

[SEAL.]

CHARLES S. PIERCE,
Deputy Secretary of State.

I do hereby certify that the foregoing case having been heard upon the examination of the witnesses in open court the same as in a suit at law, the foregoing case contains the evidence at large, substantially stated, as taken before me on the hearing, together with the proceedings thereon and depositions, exhibits and documents so introduced in evidence as stated therein, and the same has been settled before me within the time and in the manner required by law, as such time for such settlement was duly extended by order of the court within the prescribed time and in accordance with the rules and practice of the court for the full four months' period from and after the date of the entry of a decree therein this 11th day of February, A. D. 1902.

J. W. STONE,
Circuit Judge.

809 *Opinion of Hon. John W. Stone, Circuit Judge.*

STATE OF MICHIGAN:

The Circuit Court for the County of Marquette. In Chancery.

THE NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG, and MARY Kaufman, Complainants,
vs.
WILLIAM G. MATHER, MURRAY M. DUNCAN, THE IRON CLIFFS Company, and The Cleveland Cliffs Iron Company, Defendants.

The bill in this cause is filed to restrain the defendants from mining and removing iron ore from certain lands in sections six (6), seven (7) and eight (8), in town forty-seven (47) north, of range twenty-six (26) west, in Marquette county, belonging to the complainants, and to remove a cloud from the complainants' title, which cloud it is claimed consists of a recorded instrument referred to in the evidence as a "ninety-nine year lease," executed by one Harvey to the Pioneer Iron Company, September 17th, 1857, by virtue of which the defendants claim that they, acting for and under the direction and authority of the Pioneer Iron Company, have a right to enter upon the lands and take and remove therefrom so much of the ore as that company shall require for use in its furnaces and forges in Marquette county.

The bill of complaint alleges in substance that the Iron Cliffs Company and the Cleveland Cliffs Iron Company, through
810 their president, William G. Mather, had recently applied to the complainants for a lease of a portion of these lands for mining purposes, and that failing to secure such lease they and their officers, directors and stockholders had fraudulently combined and planned to obtain this ore without the payment therefor, by setting up the false and fraudulent claim that the Pioneer Iron Company still exists and holds the lease, and that they make use of the name of the Pioneer Iron Company as a cover under which and by means of which they seek to carry on the work of mining and removing ore from these lands, and that they were actually engaged in carrying out the plan. That the parties engaged in carrying out this scheme, so far as known to complainants, were William G. Mather, as president of the Iron Cliffs Company, and also as president of the Cleveland Cliffs Iron Company, and Murray M. Duncan, as the managing agent of both companies, and that Duncan was engaged in superintending and directing the work being done on the lands by various persons acting under his orders.

The complainants claim title to an undivided half of the lands involved in this suit, by a conveyance from the heirs of James L. Reynolds, and they claim title to the other undivided half under

foreclosure proceedings upon a mortgage executed by Harvey to Edward Breitung, and upon certain execution sales against Harvey and under a quit claim deed from Harvey of his interest in the lands.

The first question requiring the consideration of the court is the construction of the deed from James L. Reynolds to Charles T. Harvey of date of February 26th, 1857, of 4,162 acres of land in Marquette county, Michigan, embracing the lands in dispute. Immediately following the descriptions appear the words, "Which lands are sold with full warranty, subject, however, to the conditions and terms of the contract marked 'A,' herewith appended, be-
811 tween the parties hereto, concerning the undiscovered minerals on said lands."

Contract "A" recites the conveyance of the lands by Reynolds for $30,000.00 and adds: "And also in the further consideration of *reserving to himself an undivided half interest in and to all the minerals which have been or may be discovered on the premises referred to as conveyed*," with the right of acquiring certain surface privileges upon conditions named, to enable him to mine or develop his mineral interest.

Contract "A" also provides that Harvey "or his assigns shall have the sole right, free of cost or compensation to the party of the first part, to mine for their own use or for manufacturing purposes within the present limits of Marquette county, any mineral, ores or marble found on any of the premises herein referred to, but shall have no right to sell to other parties for exportation as aforesaid, without accounting to the party of the first part *for his joint half interest therein*."

Counsel for complainants contend that the effect of the Reynolds deed and contract "A" thereto annexed, was to vest in Harvey a title in fee to the surface of all the lands therein described and an undivided half interest in the minerals, the other undivided half remaining in the grantor; and that Harvey by the same instrument acquired the right to mine ore upon these lands free of royalty to Reynolds to be manufactured into merchantable iron in Marquette county. In other words, that Harvey, "or his assigns," acquired the right to take of the ore in which he and Reynolds were tenants in common, upon the conditions named in the contract, whatever they might require for manufacturing purposes, within the then present limits of Marquette county. This particular right, they claim, was a mere incorporeal, indivisible right, assignable only as an entirety, and limited to Harvey's lifetime.

812 Counsel for the defendants contended that the deed from Reynolds vested in Harvey an estate in fee simple, not only in the surface of the lands, but in the minerals therein, and that by virtue of the provisions of contract "A" Reynolds acquired at most only an incorporeal interest in the minerals, limited to his lifetime, or, as urged by one of defendants' counsel at the argument, an in-

corporeal interest "in one-half of an indeterminate remainder, after Harvey gets through mining," etc.

Are the words "reserving to himself" to be construed as equivalent to "excepting and reserving"?

Words of reservation may operate by way of exception and to have any effect whatever must do so when the subject of the reservation is not newly created, as a rent or other interest strictly incorporeal.

In Marion *vs.* Brewster, 55 N. Y., 538, the deed contained the words "reserving always all mineral ores now thereon and known or that may hereafter be known."

In Whitaker *vs.* Brown, 46 Pa. St., 197 (5 Mining Reports, 656), the words of reservation were, "saving and reserving for his own use the coal contained in said piece or parcel of land."

In Erickson *vs.* Mich. L. & I. Co., 50 Mich., 604, the words of reservation were, "saving and reserving, however, unto the party of the first part and to its successors and assigns forever, all ores and minerals, and all slate, sandstone, limestone," etc.

In all these cases it was held that the grant was a grant in fee simple of the entire property sold, *except certain contents of it* specified in the deeds. To the same effect is

Mulreed *vs.* Clark *et al.*, 110 Mich., 229.

Chicago Lumbering Co. *vs.* Powell, 120 Mich., 51.

In construing instruments of this character we are re-
813 quired to give the language its natural and common meaning, such as the contracting parties must have contemplated and understood, under the circumstances surrounding the transaction.

Deer Lake Co. *vs.* Mich. L. & I. Co., 89 Mich., 180.

Martin *vs.* Cook, 103 Mich., 236.

There is nothing in the testimony to warrant the conclusion that the parties intended that the entire title in the minerals should pass to Harvey. But, on the contrary, there is much to warrant the conclusion that it was the intent of the parties that Reynolds should retain an estate of inheritance in the minerals.

In 1879, after the death of Reynolds, the Negaunee Iron Company, having acquired Harvey's interest in a portion of the lands, filed its bill in this court against Reynolds' heirs and against Edward Breitung, then a lessee under Reynolds, averring that "No estate of inheritance or other interest was reserved or remained in the said James L. Reynolds after his conveyance to Charles T. Harvey, of February 26th, 1857," and praying for a decree to that effect.

The case was heard upon pleadings and proofs and a decree was entered dismissing the bill, from which no appeal was taken. The court should not now give this instrument a different construction, unless it shall clearly appear that the court erred in its construction of the deed, in that cause.

After the decision in that cause was made, Edward Breitung, now deceased, under whom these complainants claim title, bought the Reynolds interest and paid therefor the sum of $55,000.00. It also appears that Edward Breitung conveyed the interest acquired from the Reynolds heirs, in a portion of the lands, to the Arctic
814 Iron Company, and that he contracted to sell the interest thus acquired in another portion, to A. B. Meeker, *et al.*, which contract they assigned to Hewitt, Ramsey & Jones; and the testimony shows that Edward N. Breitung, son of Edward Breitung, and one of the present complainants, in 1893, relying upon the advice of counsel that he was getting a clear title, purchased the interest of Hewett, Ramsey & Jones, paying therefor the sum of $43,000.00. Numerous leases of some portions of this property have been made from time to time, in which the title under the Reynolds heirs was recognized as valid, and as covering an undivided half of the minerals in the lands described in the Reynolds deed.

I am clearly of the opinion that Reynolds by his deed and Contract "A," conveyed to Harvey in fee simple all the surface and an undivided half of the minerals, and that he retained title to the other half of the minerals.

The special privilege or right which Harvey acquired to mine free of royalty to Reynolds is found in contract "A" in the following language:

"*Provided:* And it is agreed, however, that the party of the second part, or his assigns, shall have the sole right, free of cost or compensation to the party of the first part, to mine for their own use or for manufacturing purposes, within the present limits of Marquette county, any mineral ores, or marble found on any of the premises herein "referred" to, but shall have no right to sell to other parties for exportation as aforesaid, without accounting to the party of the first part for his joint half interest therein."

The right thus granted was an incorporeal right, not to Harvey and his *heirs*, but to Harvey "*or his assigns.*" The grant having been made prior to the statute of 1881 (sec. 9016, C. L.), it was necessary in order to create an estate of inheritance in Harvey, that the
815 grant should contain the word "heirs." Without it the instrument (contract "A") vested in Harvey a mere life estate.

2nd Blackstone, 121.
4 Kent's Com., 25.
Clearwater *vs.* Rose, 1st Blackf., 137.
Morral *vs.* Sutton, 4 Beav., 478.
Foster *vs.* Joyce, 3 Wash. C. C., 798.

This incorporeal right could not, without the consent of the grantor, be divided or cut and carved into several distinct and separate rights to be held and operated by more than one company or corporation without destroying it. He might have assigned it as a whole, but not otherwise.

Van Rensler *vs.* Radcliff, 10 Wend., 639.
Leyman *vs.* Abeel, 16 Johns. R., 30.

"When a party does what he ought not to do, makes a severance of an entirety, he forfeits his right, and though such forfeiture operates beneficially to the landlord it is upon the principle that apportionment being against common right, is not to be favored."

A leading case involving this question is Funk *vs.* Haldeman, 53 Pa., 229 (7 Mining Reports, 203), in which the court held that the grantee of such a mining right might assign it to one or more, but if to more than one, they must hold together as tenants in common of an impartiable estate.

Coleman *vs.* Coleman, 7 Harris, 100.

In the case at bar there is no evidence to warrant the conclusion that Reynolds consented to a division of Harvey's incorporeal right. The case of Harlow *vs.* Lake Superior Iron Co., 36 Mich., 104, fully recognizes the rule under consideration.

Did Harvey destroy his incorporeal right?

816 April 22, 1857, Harvey conveyed by warranty deed to the Pioneer Iron Company, "their heirs and assigns forever, in corporate succession," 3,488 acres of the land embraced in the Reynolds deed. Immediately following the descriptions in the deed are the words:

"All of which is sold subject to the reservation of minerals and conditions of using and developing and sale of the same of said lands, as specified in the deed of the premises by James L. Reynolds and wife to the party of the first part. But all the interest thereby acquired by the party of the first part, to one undivided half of the minerals exported and the privilege of manufacturing free of cost, ores which may be mined in the said lands *is hereby assigned* as fully as can be done by the party of the first part to the party of the second part hereto."

At the time of the execution and delivery of this deed, Harvey also executed and delivered to the company what has been referred to in the evidence as a "temporary agreement," covering the lands involved in this suit and which were not included in the deed to the company, which in most respects was substantially the same as the 99 year lease executed September 17th, 1857, under which the defendants seek to justify their entry upon complainants' lands.

The "rights and privileges" granted are:

1. To take and remove the timber from certain portions of the land.

2. The party of the second part shall have in perpetuity the right free of charge (except for land damages hereinafter mentioned), to mine, obtain and use any ores or marbles found on said lands, or on any other lands now owned by the party of the first part in either of the townships above mentioned. *Provided*, It shall not mine or obtain any ores on said lands *except what it shall actually convert into merchantable iron in its own establishment.*

817 3. "These privileges shall only descend to the party of the second part, *successors in corporate succession.*"

4. "These rights and privileges are made subject, however, to the terms of the prior deed of James L. Reynolds and wife to the party of the first part, by which he acquired title to the lands mentioned which reservations were known prior to the execution of this indenture."

Did the execution and delivery of the two instruments, the deed and "the temporary agreement," operate as an assignment by Harvey of *all his incorporeal right*, or did he by these instruments attempt to divide it?

The deed purports to assign the right in so far as it affects and relates to the lands therein conveyed. The "temporary agreement" in so far as it purports to grant the privilege to mine free of royalty, *granted*, or attempted to grant, a mere incorporeal hereditament. It did not purport to be an *assignment of Harvey's entire interest.*

Harvey, if he had not already destroyed it, retained the right in himself or his assigns to take marble and minerals from the same lands for manufacture in Marquette county free of royalty. He also retained his right as a tenant in common, to mine without stint.

The right of the grantee under such an instrument is not exclusive, and the grantor may grant similar privileges to other parties.

Harlow *vs.* Lake Superior Iron Co., 36 Mich., 105.
Chetham *vs.* Williamson, 4 East., 476.
Stockbridge Co. *vs.* Hudson Co., 170 Mass., 322.
Union Petr. Co. *vs.* Bliven, 72 Pa. St., 173.

In Silsbee *vs.* Trotter, 29 N. J. Eq., 228 (3 Mining Rep., 137), the court say:

"The authorities are agreed that a license to dig and take
818 ore is never exclusive of the lessor, unless expressed in such words as to show that that was the intention of the parties. Where the license simply gives the licensee the right to dig and take ore, the licensor may take ore from the same mine at the same time and also grant permission to others to exercise the same right. This seems to have been the prevailing rule upon the subject since Mountjoy's case, decided during the reign of Queen Elizabeth."

The rule as above cited was recognized and affirmed in

Rutland Marble Co. *vs.* Ripley, 10 Wallace, 339.
Caldwell *vs.* Fulton, 31 Pa., 475.
Johnston Iron Co. *vs.* Cambria Iron Co., 32 Pa., 341.
Gloninger *vs.* Franklin Coal Co., 55 Pa., 9.

In Brush Electric Co. *vs.* California Electric Light Co., U. S. App., 410, it was held that the word "assigns" in a contract of license, did not confer the right to assign the license *in part*.

Harvey, by his deed to the Pioneer Iron Company, conveyed all the surface and an undivided half of the minerals in a part only of the land conveyed to him by Reynolds, and he also attempted thereby to assign his right to take ore free of royalty to Reynolds, from lands described in his deed.

By the "temporary agreement," and subsequently by the 99-year lease, Harvey attempted to confer upon the company the right to mine for a certain purpose upon the lands not included in his deed to the company, *but not the exclusive right.*

The second lease, instead of being in perpetuity, is for 99 years, and the words "its own establishment" are changed to "its own furnaces and forges."

After the execution of the temporary agreement and of the 99-year lease, which it is claimed was substituted for the temporary agreement, the Pioneer Iron Company conveyed by full covenant warranty deed to James L. Reynolds, 543 acres of land it had purchased from Harvey under the deed of April, 1857, and on
819 September 14th, 1889, it conveyed to the Arctic Iron Co. all its interest in the minerals in 24½ acres in the south half of section six (6) *which was covered by the 99-year lease, but which it purchased from Harvey in 1858.*

The question was mooted at the hearing, whether, as Harvey was a tenant in common with Reynolds in the ownership of the minerals, he did not have the right to encumber his interest by the 99 year lease, in so far as it would not prejudice the right of his co-tenant, and whether, even though he may have extinguished his incorporeal right, the Pioneer Iron Co., might not legally enter upon the lands and mine, by accounting to Reynolds or his grantees for their half of the royalty. If this question be answered in the affirmative, the fact remains that the right acquired by the company under its 99-year lease was a mere indivisible, incorporeal hereditament, and by reason of its conveyance of its entire interest in the minerals in a portion of the lands covered by the lease, its privilege or right as to the remainder was thereby terminated.

The conclusion is, that the incorporeal right granted by Reynolds to Harvey was so cut up and divided as to destroy it, and whatever right the company acquired under the 99-year lease was extinguished by its conveyance of all of its mineral interest in a portion of the lands covered by the lease. It therefore follows that the complainants, who have acquired Harvey's title to the lands involved in this suit, hold same unincumbered by this incorporeal right.

Upon the question of whether the 99-year lease was intended as a grant of a right appurtenant to the furnaces being built by the company at Negaunee, it is evidence from the instrument itself and from the testimony that it was the understanding of the parties at the time of the execution of the 99-year lease, that the ore to be mined by it from the lands involved in this suit, free of royalty, was to be used in the furnaces and forges then being constructed by it at Negaunee, and none other. It was a right intended for the benefit of and to be enjoyed in connection with these furnaces and forges, and was appurtenant to them.

820 In Jones *vs.* Van Bochove, 103 Mich., 98, it was held that a strip of land, conveyed as a right of way for a railroad from a marl bed to the grantee's works, was appurtenant, and that when

the works was abandoned, the easement was extinguished; and in deciding the case, the court say:

"It seems to be settled that, when the non-user is accompanied by acts on the part of either the owner of the dominant or servient tenement which manifest an intention to abandon, and which destroy the object for which the easement was created, or the means of its enjoyment, an abandonment will take place."

Davis *vs.* Gale, 32 Ala., 27.
Canny *vs.* Andrews, 123 Mass., 155.
Ward *vs.* Ward, 7 Each., 838.
Reg. *vs.* Chorley, 12 Q. B., 515.
Hale *vs.* Oldroyd, 14 Mees. & W., 789.
Williams *vs.* Nelson, 23 Pick., 141.
Dyer *vs.* Depui, 5 Whart., 584.
Nowry *vs.* Sheldon, 2 R. I., 369.
Crain *vs.* Fox, 16 Barb., 184."

The furnaces in which it was understood this ore was to be used, were destroyed and abandoned by its owners several years ago, and this of itself would be sufficient to extinguish the 99-year lease if actually in force at the time of such abandonment.

While the lease specifies 99 years as the term of its existence, it was made personal to the Pioneer Iron Company and its successors, and by its terms was unassignable. I am of the opinion that whatever right was granted by it would be terminated, if not already terminated when the corporation ceased to exist in 1887, except for the purpose of winding up its affairs. The grant was manifestly to the Pioneer Iron Company and its successors *in corporate succession;* and when the thirty years' term for which the company was organized expired, it had no corporate successor, and all right under the lease would thus be terminated, and when once terminated, nothing but a new grant could revive it. A reorganization of the company at any time thereafter would not revive the right, for such reorganized corporation as to these complainants is clearly not the Pioneer Iron Company named in the 99 year instrument.

821

The foregoing conclusions render it unnecessary to consider the questions of the ownership by the Iron Cliffs Company of the stock of the Pioneer Iron Company at the time of the attempted reorganization, or the question of the present ownership of all of the stock of the Iron Cliffs Company, by the Cleveland Cliffs Iron Company, or the effect of a failure by the Pioneer Iron Company to carry on the business for which it was organized for ten years, before attempting to reorganize or to take the necessary statutory steps to reorganize until after three years, from the expiration of the Pioneer Iron Company's corporate term.

It is contended in behalf of the defendants that in any event the complainants are not entitled to a decree without making the Pioneer Iron Company a party to the suit. To this contention the complainant's counsel reply that the acts complained of were tor-

tuous, and that the case is therefore several as well as joint in equity as at law, and that the absence of one tortfeasor will not prevent the court from interfering and granting relief.

Coal Silver Mining Co. *vs.* Virginia Water Co., 1st Sawy. U. S., 470, (7 Mining R., 503–516).

Enc. of Pledg. & Pract., v. 15, 658, and cases there cited.

They also contend that the Pioneer Iron Company would be bound by the decree without making it a party, for the reason that the defendant William G. Mather was the president of the company, and the holder of a large majority of its stock as trustee for the defendant, The Iron Cliffs Co., at the time of filing the bill, and that therefore the company would be bound, though not a formal party to the suit.

"This doctrine, tersely stated, is to the effect that where it appears that a particular party, though not before the court in
822 person, is so far represented by others who are before the court, that its interests receive actual and efficient protection, his actual joinder may be dispensed with and the decree may be held to be binding upon him."

15 Enc. of Pledg. & Pract., 527–628 and cases cited.

Whether the company is so far represented in this case by the defendant Mather, as that a decree would be binding upon it, it does not seem necessary to decide. The theory of the bill is, that the defendants named are committing a trespass upon complainant's property and are setting up a claim of right under an instrument which, in connection with their claim, operates as a cloud upon complainant's title. They show title to the lands involved in the case, and an entry upon the lands by the defendants for the purpose of removing iron ore therefrom. If the authority which the defendants set up is shown to be invalid for any cause, it is sufficient to entitle the complainants to a decree regardless of the question of whether such decree would operate to bind the Pioneer Iron Company.

Steam Transit Co. *vs.* City of Brooklyn, 78 N. Y., 524.

The opinion of the court is, that it is not necessary to make the Pioneer Iron Company a party defendant.

Let a decree be entered in accordance with the foregoing findings and opinion, with costs to complainants to be taxed.

October 10th, 1901.

J. W. STONE,
Circuit Judge.

823 *Decree.*

STATE OF MICHIGAN:

The Circuit Court for the County of Marquette. In Chancery.

THE NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG, and Mary Kaufman, Complainants,
vs.
WILLIAM G. MATHER, MURRAY M. DUNCAN, THE IRON CLIFFS Company, and The Cleveland Cliffs Iron Company, Defendants.

At a session of said court held at the court house in the city of Marquette, in said county, on the fifth day of October, in the year 1901.

Present: The Honorable John W. Stone, circuit judge.

This cause having come on to be heard upon the bill of complaint, the answer thereto, the replication of the complainants to such answer, and the proofs in said cause taken in open court, and having been argued by counsel for the respective parties, and the court having duly considered the same, and being advised in the premises, doth find, order, adjudge and decree as follows:

1st. That the controlling equities in this cause are with the complainants.

2d. That on the 26th day of February, A. D. 1857, one James L. Reynolds conveyed by warranty deed to Charles T. Harvey four thousand one hundred and twenty-six acres of land in Marquette county, subject to the conditions of an agreement marked "A" annexed to and forming a part of said deed, and thereby vested
824 in said Harvey all the surface and an undivided half interest in fee in the minerals contained in all said lands, and vested also in said Harvey during his life-time the incorporeal right to mine free of cost or compensation to said Reynolds, for his use for manufacturing purposes within the then present limits of Marquette county, any mineral ores or marble found on any of the lands conveyed, but with no right to sell the same to other parties for exportation without accounting to said Reynolds for his joint half interest therein. That said Reynolds excepted from said conveyance an undivided half of all the minerals which had been or which might thereafter be discovered on said lands.

3rd. That on the 22nd day of April, A. D. 1857, said Charles T. Harvey conveyed to the Pioneer Iron Company three thousand four hundred and eighty-eight acres of the said lands conveyed to him by said Reynolds, and assigned to said Pioneer Iron Company all his said interest in said lands, intending to assign his said incorporeal

right to mine free of royalty as aforesaid, in so far as the same related to the lands conveyed to said company.

4th. That at the time of the execution of said deed by said Harvey to said Pioneer Iron Company, he, the said Harvey, also executed and delivered to said company an agreement that said company should have the right to take ore from that portion of the lands conveyed to him by Reynolds, which were not embraced in his deed to that company, free of royalty, for the purpose of manufacturing into merchantable iron in their own establishment.

5th. That after the execution and delivery of the said deed and agreement of date April 22d, 1857, the said Pioneer Iron Company determined to erect at Negaunee aforesaid, two stacks or furnaces instead of one as originally contemplated by said company, the same to be operated in one plant as one establishment, and thereupon, on the 17th day of September, 1857, by agreement of the parties a new instrument known as the 99-year lease, a copy of which is
825 annexed to and forms a part of the complainants' bill of complaint, was substituted for and took place of the agreement of date April 22nd, 1857. That in and by said substituted agreement said Harvey attempted and undertook to grant to the said Pioneer Iron Company an unassignable, incorporeal right to mine and take from the said lands, still retained by him, including the lands involved in this suit, such ore only as it should convert into merchantable iron in its own furnaces and forges. That the ore to be mined was, under the terms of the agreement of September 17th, 1857, and under the understanding of the parties, to be used in the stacks or furnaces then being erected by said company at Negaunee, and in none other, and the rights thereby granted are appurtenant to said furnaces, and that in 1894 said furnaces were abandoned, torn down and destroyed by the owners thereof, and have never been rebuilt.

6th. That by the instrument known as the 99 year lease the said Harvey did not assign to the said Pioneer Iron Company his said incorporeal right to mine upon the lands therein described, in its entirety, but attempted to still retain in himself the right to mine for his own use or for manufacturing purposes in Marquette county, free of cost or compensation to said Reynolds.

7th. That after the execution and delivery by said Harvey to the said Pioneer Iron Company, of the said ninety-nine year instrument, the said Harvey also conveyed his entire interest in portions of said lands and minerals covered by and embraced in said instrument, as follows:

August 5th, A. D. 1858, to said Pioneer Iron Company a portion of the lands in the southeast quarter of section six (6), in town forty-seven (47) north of range twenty-six (26) west. April 26th, 1866, to Edward Breitung, lands in the southwest quarter of section five (5), in the southeast quarter of section six (6) and in the northwest quarter of section eight (8) in the same township.

January 15th, 1867, by separate conveyances, his entire interest

in different parcels of land in the southeast quarter of said
826 section six (6) to each of the following named persons: Maxim Perrin, John Blais, Joseph Boyer, Michael T. Gaffney, Joseph Engels, Caesar Charles, and one Bellavoux, respectively.

November 13th, 1876, to John B. Maas, by circuit court commissioner, upon foreclosure of a mortgage executed by said Harvey about six hundred and forty acres of said land in sections six (6), seven (7) and eight (8) in said township.

November 13th, 1876, to Nicholas Lonstorf, by circuit court commissioner, upon foreclosure of a mortgage executed by said Harvey, about four hundred and forty acres of land in sections six (6), seven (7) and eight (8), in said township.

The necessary effect of said conveyances by said Harvey and of the attempted partial assignment as aforesaid was to destroy the incorporeal right obtained by said Harvey from said Reynolds.

8th. That on the 10th day of November, 1862, the said Pioneer Iron Company conveyed to James L. Reynolds by warranty deed, five hundred and forty-three acres of the lands which said Harvey had conveyed to it in April, 1857, in sections five (5) and six (6), in town forty-seven (47) north of range twenty-six (26), west, and in sections thirty-one (31) and thirty-two (32), in town forty-eight (48) north of range twenty-six (26), west.

September 27th, 1880, the Pioneer Iron Company by United States marshal, on sale made July 25, 1876, conveyed to Michael T. Gaffney a strip of land in the southeast quarter of said section six (6).

September 27th, 1880, the Pioneer Iron Company by United States marshal, on sale made July 25th, 1876, conveyed to Amabel Boyer, a strip of land in the southeast quarter of said section six (6) containing about ten acres.

September 4th, 1889, the said Pioneer Iron Company conveyed to the Arctic Iron Company all its mineral interests in twenty-four and one-half acres in the southeast quarter of said section six.

On the 10th day of March, 1866, said Pioneer Iron Com-
827 pany leased for a period of ten years to the said Iron Cliffs Company all its real and personal property, iron works, buildings, lands and rights, subject to certain reservations therein named, but not reserving any rights under the said ninety-nine year lease.

The necessary effect of said conveyances by said Pioneer Iron Company was to destroy the incorporeal right obtained by the Pioneer Iron Company from Harvey in his undivided one-half of the minerals.

9th. That the said complainants prior to the commencement of this suit, acquired and then held the entire title to the lands and minerals involved in this suit.

10th. That the said Pioneer Iron Company was a corporation organized under an act of the legislature approved February 5th, 1853, to authorize the organization of companies for mining, smelting and manufacturing purposes, and the acts amendatory thereof, and its corporate term of existence expired April 2d, 1887, at which time

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all unassignable, incorporeal rights personal to said company then existing were terminated and ceased to exist.

11th. That the defendants William G. Mather and Murray M. Duncan, without legal authority, and contrary to equity and good conscience, instigated and directed the trespasses complained of in complainants' bill of complaint, and under the direction and employment of the said Mather and Duncan, a large force of men entered and continued upon said lands of the complainants, digging up the soil and sinking test pits therein.

Now, therefore, in consideration of the foregoing findings and determinations of the court concerning the particular matters set forth in the complainants' bill of complaint, it is ordered, adjudged and decreed that the defendants, their counselors, attorneys, solicitors and agents, and each and every of them whether acting in their individual or representative capacity, immediately vacate and remove from the lands described in the bill of complaint, and that they and each of them, be and they hereby are perpetually enjoined from further entering upon the said lands of the complainants for the purpose of exploring for or taking therefrom any minerals or iron ore, or for any purpose whatever, without the consent and authority of the complainants.

It is further ordered, adjudged and decreed that the complainants recover from the said defendants their costs in this cause to be taxed and that they have execution therefor.

J. W. STONE,
Circuit Judge.

Countersigned Oct. 19th, 1901.
WM. A. ROSS,
Register in Chancery.

828 STATE OF MICHIGAN:

Supreme Court. In Chancery.

NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG, and MARY Kaufman, Complainants and Appellees,
v.
THE IRON CLIFFS COMPANY, THE CLEVELAND-CLIFFS IRON COMPANY, Wm. G. Mather, and Murray M. Duncan, Defendants and Appellants.

Appeal from Marquette, in chancery.

Maps Accompanying Record.

(Here follow maps marked pp. 828*a*, 829, 830, 831, & 832.)

833 STATE OF MICHIGAN, } ss:
County of Marquette, }

In the Circuit Court for the County of Marquette. In Chancery.

NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG, and MARY Kaufman, Complainants,
vs.
THE IRON CLIFFS COMPANY, THE CLEVELAND CLIFFS IRON COMPANY, William G. Mather, and Murray M. Duncan, Defendants.

SIR: Take notice, that the above named defendants hereby claim the right to an appeal and do appeal to the supreme court of the State of Michigan, from the decree heretofore rendered on the 19th day of October, 1901, filed and entered in said cause.

Yours, etc.,
GEO. HAYDEN,
Solicitor for Defendants.

Business address: Ishpeming, Mich.

Mr. S. W. Shaull, solicitor for complainants.

(Endorsed:) Filed Feb. 21, 1902. Grace Ross, dep. clerk.

834 At a session of the supreme court of the State of Michigan, held at the supreme court room, in the capitol, in the city of Lansing, on the nineteenth day of February in the year of our Lord one thousand nine hundred and three.

Present: The Honorable Frank A. Hooker, chief justice; Joseph B Moore, William L. Carpenter, Claudius B. Grant, Robert M. Montgomery, associate justices.

NEGAUNEE IRON COMPANY ET AL., Complainants,
vs.
IRON CLIFFS COMPANY ET AL., Defendants and Appellants. } No. 19527.

This cause coming on to be heard is argued by Messrs. Shaull, Brown and Hanchett for complainants and by Messrs. Hoyt, Dickinson and Andrews for the defendants and appellants and submitted.

835 *Opinion.*

Supreme Court of the State of Michigan.

THE NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG, and Mary Kaufman, Complainants,
vs.
THE IRON CLIFFS COMPANY, THE CLEVELAND CLIFFS IRON COMPANY, William G. Mather, and Murray M. Duncan, Defendants and Appellants.

In 1857 one James L. Reynolds was the owner in fee of the lands involved in this suit and other lands. February 26, 1857, he conveyed to one Charles T. Harvey 4,126 acres by warranty deed. The deed, after the description, contains the following: "Which lands are sold with full warranty, subject, however, to the conditions and agreements of the contract marked 'A' herewith appended, between the parties hereto, concerning the undiscovered minerals on said lands." Then follow the usual covenants of warranty of title.

The contract is as follows:

"'This memorandum of agreement, made this 26th day of February, by and between James L. Reynolds of Chicago, State of Illinois, of the first part, and Charles T. Harvey of Marquette county, State of Michigan, of the second part.

"'Witnesseth—That the party of the first part has this day conveyed by 'warrantee' deed (to which this contract is attached) to the party of the second part certain lands therein described amounting to four thousand one hundred and sixty-two 46/100 acres, for the consideration of the sum therein named and also in the further consideration of reserving to himself an undivided half interest in and to all the minerals which have been or may be discovered on the premises referred to as conveyed, together with the rights of having or acquiring so much of the surface privileges as may be necessary to mine or develop the same by paying one-half of the equitable or appraised valuation per acre for the surface thus used or acquired. Provided not more than twelve dollars per acre shall be adjudged to be the value of unimproved lands taken for such mining purposes, besides which, however, full compensation shall be paid to the party of the second part, or his assigns, for damages which may by such mining or occupancy ensue to the business connected with or improvements placed upon such land, by the party of the second part or his assigns. Such payment to be made by the party of the first part on an equitable, agreed value, or upon an appraised valuation made by disinterested 'referees,' one designated by each party [hereto] and they choosing a third, and the decision of the three thus chosen to be final. And when such payment is made, he of the first part shall be entitled to enter upon and

occupy any portion of said lands for mining purposes as aforesaid solely.

836 "Provided—And it is agreed, that the party of the second part, or his assigns, shall have the sole right, free of cost or compensation to the party of the first part, to mine for their own use or for manufacturing purposes, within the limits of Marquette county, any mineral ores, or marble found on any of the premises herein 'referred' to, but shall have no right to sell to other parties for exportation as aforesaid, without accounting to the party of the first part for his joint half interest therein."

On April 2, 1857, the Pioneer Iron Company was organized by Harvey and others with a capital of $125,000, divided into 5,000 shares of $25 each. The purpose of its organization is stated in its articles to be "procuring a suitable location for a manufactory and lands to furnish coaling facilities therefor in the upper peninsula of the State of Michigan and working the same for the production of merchantable iron and such other use of their lands as the company may hereafter determine and adopt." On April 22, 1857, Harvey conveyed to the Pioneer Iron Company 2,688 acres of the lands conveyed to him by Reynolds and 800 acres of other lands owned by him. The consideration expressed therein was $25,000. After the description is the following:

"All of which is sold subject to the reservation of minerals and conditions of using and developing and sale of the same on said lands as specified in the deed of the premises by James L. Reynolds and wife to the party of the first part, but all the interest thereby acquired by the party of the first part to the one undivided half of the minerals exported and the privileges of manufacturing free of cost ores which may be mined on the said lands is hereby assigned as fully as can be done by the party of the first part to the party of the second part hereto."

September 17, 1857, said Harvey executed an instrument (known as the "99-year lease") to said Pioneer Iron Company conveying to it "certain rights and easements hereinafter described (subject to the provisions and limitations, thereto annexed) in and upon certain pieces or parcels of land." After the description containing 646 acres, this instrument proceeds:

"The rights and easements aforesaid being: 1st. The right to cut and remove all the timber and wood standing or otherwise being on said lands for the purpose of converting the same into charcoal or such other uses as may be desirable in the prosecution of business by the party of the second part. Such wood and timber to be removed from said lands within five years from the date hereof at such times within that period as the party of the second part may elect, in the following order, however, viz.:

"After clearing its own land on section six, T. 47 N. R. 26 W., the party of the second part shall next remove the timber and wood from the land in that section herein described until it is all removed. Then it shall remove that on land in section seven herein described.

Then that on section eight in like manner. Then that on section five first clearing that on its own land in the same and lastly that on section thirty-one T. 48, N. R. 26 W. (This last stipulation, however, to be subject to future agreements between the parties hereto.)

"2nd. The party of the first part does hereby let, lease and demise to the party of the second part for the consideration hereinbefore mentioned and for the full end and term of ninety-nine years from and after the date hereof, all the lands hereinbefore mentioned and all other lands now owned by the party of the first part in
837 either of the townships above mentioned for the sole purpose of mining and quarrying at its own expense such ores and marble as may be found thereon and subject to the provisions hereinafter mentioned, viz.:

"Provided, it shall not quarry, mine or remove any ores on said lands except such as it shall actually convert into merchantable iron in its own furnace or forges, and provided further it shall not in such mining or quarrying operations use or injure any of the improvements which may be placed upon said lands by other persons without paying just and equitable damages therefor, nor shall it occupy in such operations more land than is absolutely necessary to open and work successfully such mines of iron or marble as may be discovered. And it shall purchase and pay at the rate of twelve dollars per acre for unimproved lands which it may acquire for such purposes. The rights and easements above mentioned shall descend to the corporate successors of the party of the second part, but not to its assigns. The party of the first part hereby agrees and binds himself in nowise to convey or encumber any of the lands hereinbefore mentioned except with a reservation of all rights and easements hereby secured and intended to be secured to the party of the second part. All the above rights and easements are subject, however, to the terms of a certain deed and an agreement, accompanying the same, executed by James L. Reynolds and wife to the party of the first part on the 26th day of February, A. D. 1857, and recorded in register's office of said county in Liber 'B' of Deeds on pages 381 and 382, to which record for further particulars reference is hereby made."

This lease covers the land here in dispute. On the same day the deed from Harvey to the Pioneer Iron Company was executed, viz., April 22, 1857, Harvey executed an instrument to the Pioneer Iron Company covering the same land as that described in the above instrument of September 17th. The rights and privileges thereby conveyed are as follows:

"First. The right to cut and remove all the timber and wood standing or otherwise thereon, for the purpose of converting the same into charcoal for manufacturing purposes or such other uses as may be desirable to the party of the second part. Such wood and timber to be used and removed within five years from date, when within that period it shall suit the convenience of the party of the second part thus to do. Provided, however, that after clearing its own land

in fee, on section six, T. 47, R. 26, it shall next remove the timber from the balance of land in that section herein described until it is all removed. Then it shall remove that on section seven herein mentioned. Then that on section eight in like manner. Then next in succession that on section five after clearing its own land on the same, and lastly those in section thirty-one, in township 48
838 of range 26 west. This stipulation, however, at all times to be subject to future agreements between the parties hereto. Provided further, that as far as may be consistent with the interest of said company, it being the judge in these respects, the land when the timber is removed shall be left in a favorable condition for improvements, particularly with a view to the erection of other furnaces thereon.

"Second. The party of the second part shall have in perpetuity the right, free of charge (except for land damages hereinafter mentioned), to mine, obtain and use any ores or marbles found on said lands, or on any other lands now owned by the party of the first part in either of the townships above mentioned, provided it shall not mine or obtain any ores on said lands except what it shall actually convert into merchantable iron in its own establishment. It shall also be at its own expense for mining, and shall not use or injure the improvements placed upon the land by others without paying just and equitable damages therefor. Neither shall it be entitled to take any more land to occupy than is clearly necessary to open the mine for the iron ore or marble to be obtained readily therefrom, and shall pay twelve dollars per acre for unimproved lands which it may require.

"These privileges shall only descend to the party of the second part's successors in corporate succession.

"The party of the second part agrees not to in any wise convey the lands mentioned except with a reservation of these rights and privileges to the party of the second part.

"These rights and privileges are made subject, however, to the terms, of the prior deed of James L. Reynolds and wife to the party of the first part by which he acquired title to the lands mentioned, which reservations were known prior to the executing of this indenture."

This instrument is known as the "Preliminary agreement." Immediately after the organization of the company it issued a circular stating its object to be to engage solely and immediately in the production of pig iron, and its intention to confine its expenditures to the least amount necessary to enter upon the production of the single staple of pig iron. On April 26, 1859, the Pioneer Iron Company issued another circular, in which it was stated that the "cost of the two furnaces which it was thought advantageous to erect (instead of only one, as originally contemplated), together with other unexpected outlays, had increased the expenditures nearly $30,000 beyond the capital of the company." In May, 1857, the company had contracted for machinery, in June commenced the construction

of its furnace, and when the 99 year lease was executed its construction was well advanced. Not long after its organization the company made some explorations on the lands in controversy, but, 839 discovering no ore of sufficiently good quality for use, abandoned further operations in that direction, and during its lifetime made no further effort to mine ore from its own lands for use in its furnace. The company became financially embarrassed in 1866; leased its own plant and all its lands and property, including the 99-year lease, to the Iron Cliffs Company, a corporation organized under the laws of this State. From that time the Pioneer Iron Company ceased to operate its furnaces. Shortly after the lease to the Iron Cliffs Company, that company acquired the entire capital stock of the Pioneer Iron Company, and continued to own it until after October 18, 1889. In 1867, the legislature passed an act authorizing the Iron Cliffs Company to acquire and hold stock in any company formed for manufacturing pig iron, wrought iron, or steel. In September 10, 1874, the Iron Cliffs Company mortgaged all its property, including the capital stock of the Pioneer Iron Company. The debt secured thereby was paid in 1889. At various times from 1858 to 1877, Harvey conveyed by appropriate deeds various parcels of the lands to other parties. The Pioneer Iron Company also made several conveyances. From 1866 to 1890 the Iron Cliffs Company operated the furnace. Afterwards it was operated by the Cleveland-Cliffs Iron Company, a corporation organized under the laws of West Virginia, until 1894, when that company dismantled the furnace, and has never rebuilt it.

Complainants are the owners by mesne conveyances of the mineral interests and reservations remaining in James L. Reynolds upon the execution of his deed to Harvey, and of the interest of Harvey by foreclosure proceedings upon a mortgage executed by Harvey to complainant Edward Breitung, the father of the defendant Edward, execution sales against Harvey, and a quitclaim deed, executed by Harvey, of his interests in the lands. They and their lessees, beginning about 1870, have explored each 40-acre tract covered by the above 99-year lease, and have found ore on each tract upon which the defendants have entered for the purpose of exploration; have mined ore therefrom amounting to at least 3,000,000 tons, and have expended money thereon amounting to at least $700,000. These explorations were carried on openly and notoriously for more than 20 years. The charter of the Pioneer Iron Company expired by limitation in 1887. No steps were taken to reorganize it until 1889. On October 7, 1889, a special meeting of the stockholders of the company was called, and the continuance of its corporate existence directed for a period of 30 years from the expiration of its former term. This action was taken under an amendment to the constitution. On October 18th articles of reorganization were executed, and filed in the office of the secetary of state April

8, 1890. On January 9, 1900, a notice in the name of the
840 Pioneer Iron Company was served upon the complainants that they had entered upon certain of the lands in controversy (describing them) for the purpose of exploring for iron ore "to be used in the furnaces of said company of the undersigned in said county, according to the grant made to it in the lease executed to the undersigned by Charles T. Harvey on the 17th day of September, A. D. 1857." Two similar notices were served later in regard to other lands. Thereupon, on March 9, 1900, complainants filed their bill in chancery, praying that the title to their lands be quieted, the title confirmed in them, and that the defendants be restrained from entering upon said lands to mine and remove ore. Answers were duly filed, proofs taken, and decree entered for the complainants.

Complainants, in their bill and brief, state their position as follows: "(1) That Harvey acquired the indivisible, but not the exclusive, right to mine, free of royalty, for the purposes indicated, during his lifetime. (2) That this special mining privilege was terminated and extinguished by a division of the estate, both Harvey and the Pioneer Iron Company having conveyed separate portions of the land to different parties. That, while Harvey's special privilege could be assigned as an entirety, it could not be cut up, and conveyed in separate parcels. (3) The 99-year lease provides that the lessee should not 'mine or remove any ores on said lands, except such as it shall actually convert into merchantable iron on its own furnaces and forges,' thus making the right appurtenant to said furnaces and forges. 'The furnaces and forges,' referred to have long since been dismantled and abandoned. With their destruction and abandonment the incorporeal right to mine for their use ceased to exist. (4) The lease provides that the rights and easements mentioned shall 'descend to the corporate successors of the company, but not to its assigns.' The thirty-year corporate term for which the company was organized expired April 2, 1887, and all nonassignable incorporeal rights which it may have had at that time were thereby terminated. The company had no corporate successor. (5) That the Pioneer Iron Company did not for more than ten years next preceding the 2d day of April, 1887, carry on the business for which it was organized, and therefore was not authorized by act 142 of the public acts of 1889 to reorganize. (6) The Pioneer Iron Company has not been recognized in compliance with law."

The defendants deny these contentions, and insist that: "The deed of February 26, 1857, from Reynolds, conveys a fee-simple absolute to Harvey, 'his heirs and assigns,' not in the surface or part of the lands described, but 'in all the estate, right, title, interest, claim, and demand whatsoever' which Reynolds had therein.

The clause referring to contract A does not express an exception
841 to this grant, but merely relieves from the operation of the 'full warranty' of the deed the rights which the parties agreed in contract A that Reynolds (not his heirs and assigns) should

have, or at most amounts merely to a reservation to Reynolds of an incorporeal hereditament comprising certain undiscovered mineral rights, and the rights to acquire from Harvey, as owner of the fee, certain surface privileges by paying for them. The provisions of contract A, properly construed with the deed, and as a part thereof, constitute an agreement between the parties to the deed, by which Reynolds (not for his heirs and assigns) reserved to himself, or, more properly, acquired back from Harvey, certain mineral rights and rights of acquisition during his lifetime in the lands which he granted by deed to Harvey and his heirs forever. By it Reynolds had an incorporeal hereditament (not a vested right in the land, for he had parted with all that), but a naked right to a share in minerals if discovered and reduced to possession, and a further naked right to buy back at a certain price such surface rights from Harvey as might be required to reduce such minerals to possession, if found. Harvey acquired no right by contract A. The final proviso is not in any sense a grant from Reynold, for he granted all he had in the deed. It merely defines the rights which Reynolds is reserving by explaining that his right to one-half the ore which may be discovered shall not require Harvey to account for ore which Harvey may use for manufacturing in Marquette county."

1. It is urged that this bill cannot be maintained, because its main purpose is to declare a forfeiture of the 99-year lease, and that courts of equity will not enforce a forfeiture. Counsel cite in support of this contention Funk *v.* Haldeman, 53 Pa. 229; Story's Eq. Jur. § 1319; Bispham's Prin. in Eq. § 181; Pomeroy, Eq. Jur. § 459; Crane *v.* Dwyer, 9 Mich. 351, 80 Am. Dec. 87; White *v.* Pt. Huron, etc., R. Co., 13 Mich. 356. The general rule is undoubtedly as stated in Funk *v.* Haldeman. The statement by the court was not necessary to a decision of the case. The court held that there was no violation either of tenure or covenants of the instrument which conveyed to Funk an incorporeal hereditament in fee, namely, the right to enter upon certain lands for the purpose of prospecting, boring, and taking away ore, oil, etc., out of the earth. The claim was that Funk had subdivided that which he could only hold in entirety, and had, therefore, lost all. At the close of the opinion the court said that, if Funk had lost his rights by the subdivision,
842 "a chancellor would be likely to send the grantors into a court of law to enforce the forfeiture by ejectment; for equity does not, ordinarily, enforce forfeitures." The case does not hold that in no case of forfeiture may a court of equity interfere. Pomeroy states that those cases which appear to be exceptions to the rule are not so in reality. Bispham says, "In some cases, however, the enforcement of a forfeiture may be regarded in equity with favor." Crane *v.* Dwyer was an attempt to enforce in equity a forfeiture of a land contract, the vendee being in possession. The forfeiture sought to be enforced in White *v.* Pt. Huron, etc., R. Co., was similar. These cases are in accord with the general rule. See, also, Hodges *v.* Buell (Mich.) 95 N. W. 1078. The supreme court of

Pennsylvania, in Brown *v.* Vandergrift, 80 Pa. 142, stated the doctrine to be that equity "abhors a forfeiture when it works a loss, but not when it works equity, and protects the landowner against the indifference and laches of the lessee, and prevents a great mischief." In that case the lessee agreed to keep his lease good by a payment of $30 per month until he should commence operations, and, failing to do so, the lease was forfeited. He paid for 3 months; then failed to pay or to commence operations for 11 months. He sought to continue his lease by tendering payment for the 11 months. Equity interfered, and declared the lease forfeited. In Eberts *v.* Fisher, 44 Mich. 551, 7 N. W. 211, this court, speaking through Mr. Justice Campbell, said: "There is no rule that equity will not recognize a ferfeiture when it is only one of the incidents of a past transaction." In that case it was held that the lease involved had expired by its own limitation, and until renewed, had lost any efficacy. Where a lessee has abandoned the premises, asserted no right under his lease for many years, and the lessor has been in exclusive possession, acting in apparent hostility to the lease, equity will interfere to prevent the lessee from afterwards attempting to take possession under the lease and asserting its existence. See Detlor *v.* Holland (Ohio) 49 N. E. 690, 40 L. R. A. 266.

The bill in this case alleges exclusive possession for more than 15 years in the complainants; an abandonment by the Pioneer Iron Company of the lease for nearly 40 years; that the Pioneer Iron Company was dead by reason of the expiration of its charter; that the right to mine ore conveyed by the lease to the Pioneer Iron Company was appurtenant to the furnaces which it was then erecting; that said furnaces were dismantled in 1894; that no other furnace has been erected since; and that said right to mine ore, conveyed by said lease, was personal to the Pioneer Iron Company, and incapable of assignment. We think, however, the main purpose of the bill is, not to declare a forfeiture of the lease, but to determine the rights of the parties, which depend largely upon the con-
843 struction of the deeds, the leases, and the various acts and conduct of the parties, extending over a period of more than 40 years, and to enjoin a continuing trespass. The case is one peculiarly appropriate to a court of equity.

The bill sets forth three notices in the name of the Pioneer Iron Company that it had entered upon the disputed lands for the purpose of mining iron ore. It is, therefore, apparent that numerous acts of trespass and the removal of valuable ore were threatened. The defendants are not in possession. The Pioneer Iron Company, through Mr. Duncan, its alleged agent, who is also agent and manager of the defendant companies, give notice to the complainants that they had entered upon certain of these lands for the purpose of exploring for iron ore to be used in the furnaces, according to the grant made in the 99-year lease. Under this notice and all the others there was no claim of occupancy by the defendants or the Pioneer Iron Company by adverse possession. Whether or not,

under these circumstances, ejectment would lie, we need not determine. Complainants being in possession of the property, if their title is valid, irreparable injury was threatened by the defendant. Such trespasses a court of equity will enjoin. Pomeroy's Eq. Jur. § 1357; Stone *v.* Roscommon Lumber Co., 59 Mich. 31, 26 N. W. 216; Hall *v.* Nester, 122 Mich. 141, 80 N. W. 982; Halpin *v.* McCune, 107 Iowa, 494, 78 N. W. 216; Campbell *v.* Kent circuit judge, 111 Mich. 575, 70 N. W. 141; Wolf Brick Co. *v.* Lonyo (Mich.) 93 N. W. 251; West Point Iron Co. *v.* Reymert, 45 N. Y. 703; Oolagah Coal Co. *v.* McCaleb, 68 Fed. 86, 15 C. C. A. 270.

2. It is also urged as a fatal objection to the maintenance of the bill that the Pioneer Iron Company is not made a party. Under the allegations of the bill, and as well under the proofs, the Pioneer Iron Company is used as a "dummy" for the benefit of the defendant companies. The defendants own, and have owned for many years, all its capital stock, its furnaces and property, both real and personal. They have managed all its affairs, and for their own benefit. All its accounts, if any have been kept in the name of the Pioneer Iron Company, have been kept upon the books of the defendants. The defendants refused upon the trial to produce the books of the Pioneer Iron Company, or their own books showing the accounts. Some of its officers having charge of the books were produced as witnesses, and testified to the above facts. Under these circumstances these defendants cannot escape the consequence of their acts done in the name of the Pioneer Iron Company for their own benefit. Admitting that the Pioneer Iron Company is not a dead corporation, yet all its property, franchise, and rights are owned by the defendant companies, so far as the rights under the 99-year lease are concerned, and are fully represented by those now before the court.

844 The theory of the complainants, as stated in their bill, is that the Pioneer Iron Company is a dead corporation; its charter expired by limitation April 2, 1887; and that no steps were taken for some time thereafter to reorganize the corporation under the amendment to the constitution and the law; and that that action was wholly invalid. The Pioneer Iron Company therefore was not a necessary party. 15 Enc. Pl. & Pr. p. 627; Hale *v.* Hale, 146 Ill. 227, 33 N. E. 858, 20 L. R. A. 247. Complainants could not well have made The Pioneer Iron Company a party defendant without recognizing it as an existing corporation. Its existence was in issue, and, having expired by limitation of its charter, the burden of proof was upon the defendants to show a valid reorganization, so as to make it the successor of the company within the terms of the 99-year lease. Equity will enjoin the threatened acts of those assuming to act within the name of a dead corporation. Att'y Gen. *v.* The Chicago & Evanston R. Co., 112 Ill. 520; Brooklyn Steam Transit Co. *v.* City of Brooklyn, 78 N. Y. 525.

3. The further answer to those objections to the jurisdiction of the court is that they should have been raised by demurrer. The facts upon which they are based are apparent upon the face of the

bill. The defendants having answered, put the case at issue upon the merits, and taken proofs upon that issue, cannot now raise the question of jurisdiction. Wolf Brick Co. *v.* Lonyo, *supra*; Le Roy *v.* Platt, 4 Paige, Ch. 81; Livingston *v.* Livingston, 4 Johns. Ch. 290, 8 Am. Dec. 562; Waterloo Mining Co. *v.* Doe, 82 Fed. 45, 27 C. C. A. 50.

4. Construction of deed from Reynolds to Harvey. Whatever interests in the lands Reynolds reserved in himself which were assignable by him or descendable to his heirs, the complainants own by appropriate deeds. Whatever interests are not now vested in the Pioneer Iron Company by the 99-year lease are also owned by complainants by appropriate conveyances from Harvey. The first important question, therefore, is, what interest did Reynolds convey to Harvey, and what did he retain in himself? Defendants invoke the rule that deeds must be construed most strongly against the grantor. This rule cannot be invoked to defeat the intent of the grantor fairly gathered from the four corners of the instrument. Resort to this rule will only be had when other rules of construction fail. Swan *v.* Morehouse, 6 D. C. 228. Deeds are contracts, and when courts can ascertain from the deed itself the intent of the grantor, the deed will be construed so as to give that intent effect, and that intent will be carried out "as the mass of mankind would view it," and not in accord with the technical definition of the words. A dispute raised between parties as to the meaning of the language of an instrument does not of itself create a doubt so as to admit the ap-
845 plication of the rule defendants invoke. Therefore the definition agreement, dated February 9, 1871, between Reynolds and Harvey, specifically stating what interest Reynolds conveyed and what he retained (which agreement is referred to hereafter), does not of itself show a doubt as to the meaning of the deed which the court will recognize as a reason for applying the rule. If there is a doubt as to the meaning, courts will consider the situation of the parties, the subject-matter of the transaction, the acts, conduct, and dealing of the parties, in determining the meaning of any particular clause. These rules of construction have been recognized and applied by this court in many cases. Paddack *v.* Pardee, 1 Mich. 421; Norris *v.* Showerman, 2 Doug. 16; Bronson *v.* Green, Walk. Ch. 56; Vary *v.* Shea, 36 Mich. 397. It has often been held that to "reserve" means an exception, and to "except" means a reservation. These words are not controlling, but will be construed in the light of the entire language of the deed. If the grantor, no matter what the words may be, retains in himself title to a part of the land described in the deed, it is an exception. In such case words of inheritance are not necessary to retain in him the title for himself and his heirs. This is reasonable, because the deed did not purport to convey the title to the part excepted, nor to divest him of it. "Whatever is excluded from the grant by exception remains in the grantor as of his former title or right." Stockbridge Iron Co. *v.* Hudson Iron Co., 107 Mass. 321. Where, however, the language

constitutes a reservation—*i. e.*, "when the thing which is to be the grantor's comes back to him from the grantee in the nature of a grant"—such as rent, or other strictly incorporeal hereditament, words of inheritance are essential to constitute a title to the thing reserved beyond the life of the grantor. 3 Wash. (5th ed.) 465; Lathrop *v.* Elsner, 93 Mich. 599, 53 N. W. 791, and authorities cited; Marvin *v.* Brewster Iron Min. Co., 55 N. Y. 538, 14 Am. Rep. 322; Sloan *v.* Lawrence Furnace Co., 29 Ohio St. 568; Whitaker *v.* Brown, 46 Pa. 197; Foster *v.* Runk, 109 Pa. 291, 58 Am. Rep. 720. The contract referred to in the deed is as much a part of the deed as if its provisions were incorporated in the deed, and the two will be construed as one instrument. Reynolds did not convey the entire fee to Harvey, and then repurchase by the contract a certain interest in the lands.

Applying the above rules, we find no difficulty in construing the deed. It is entirely clear that Reynolds intended to convey a certain interest in the land to Harvey, and to retain the residue in himself. He carved the estate into two parts, conveyed one, and retained the other. One of the express considerations is "reserving to himself an undivided half interest in and to all the minerals
846 which have been or may be discovered on the premises referred to as conveyed." Again, in the proviso, where Harvey is required to account for ore mined and sold not for his own use or for manufacturing purposes, Reynolds' interest is described as "his joint half interest thereunder." This language is susceptible of but one construction. It clearly shows that Reynolds conveyed to Harvey the title to one half of the minerals, and retained the title to the other half in himself. The deed and contract were executed simultaneously. Harvey had nothing to grant till the delivery of his deed. When the deed was delivered, his contract was made a part of it, and he took only what the deed and contract, construed as one instrument, gave him. Reynolds burdened his half interest by conveying to Harvey the right to take without compensation any ore he might find and mine upon the premises for his own use or for manufacturing purposes, within the limits of Marquette county. Some question subsequently arose between Reynolds and Harvey as to the true construction and effect of the deed, and therefore, on February 1, 1871, they executed an agreement known as the "definition agreement," in which, among other things, it was "declared and agreed that by said deed James L. Reynolds conveyed to Charles T. Harvey, his heirs and assigns, the entire surface of the lands described and an undivided half of the minerals therein; reserving and excepting to the said Reynolds, his heirs and assigns, the other undivided half of said minerals, together with certain rights and easements in the surface as appurtenant to said mineral interests." This agreement was duly recorded March 4, 1871. It is not, of course, binding upon the defendants. It is, however, valuable as showing the understanding of Mr. Harvey, the witness upon whom the defendants largely rely to maintain their case, outside of their

claimed construction of the instruments involved, without considering any extrinsic evidence.

In 1879 the Negaunee Iron Company filed a bill in chancery in the circuit court for the county of Marquette against Edward Breitung and others, asserting that "no estate of inheritance or other interest capable of being transmitted by inheritance, devise, or assignment" was reserved by or remained in said James L. Reynolds after the said conveyance to Charles T. Harvey of February 26, 1857, and prayed that the title of the complainants might be quieted as against the claims of Reynolds' heirs. Answer was duly filed, proofs taken, and the bill dismissed. The decree dismissing the bill was entered February 20, 1880. No opinion was filed, and the decree did not state the reason for dismissing the bill. The sole question, however, involved in the case was the construction to be placed upon that deed. It seems clear that the bill could not have been dis-
847 missed without determining this question. No appeal was taken, and the parties to that suit—the complainants here—have evidently acted upon the faith of that decree, and have expended very large sums of money in the purchase of these lands, in exploration, and the erection of mining plants. Complainant Breitung bought certain interest for which he paid $45,000, and his father bought the interest of Reynolds' heirs for $55,000. Several mining corporations have been organized, and valuable mines opened by them, upon the faith of the validity of complainants' title. While that decision may not bind the Pioneer Iron Company and the defendants, yet it is entitled to great weight, as it stood unquestioned for 20 years, and must have been known to the officers of the Pioneer Iron Company and these defendants.

In 1889 the Arctic Iron Company filed a bill in equity against the Pioneer Iron Company, alleging the ownership by them as tenants in common of the minerals upon certain lands covered by the 99-year lease. The bill alleged that the Arctic Iron Company was the owner of the undivided half of the minerals, but that the title of said company was subject to the right of the Pioneer Iron Company to mine for its own use or for manufacturing purposes within the county of Marquette. In its answer the Pioneer Iron Company averred that its ownership was subject "to the right of the said complainant [The Arctic Iron Company] to an undivided half of all the minerals which may have been heretofore discovered thereon or may hereafter be discovered thereon." This is a direct and solemn recognition in writing that Reynolds retained the title in fee to one-half of the minerals by his deed to Harvey. Shortly before defendants served their notices in the name of the Pioneer Iron Company of entering upon said lands under the 99-year lease, they applied to complainants for options or leases, being refused which they attempted to enter under the 99-year lease. The conduct, therefore, of these defendants, is consistent only with the theory that they recognized the title to an undivided half of the minerals to be in these complainants.

5. The construction of the 99-year lease. By the deed from Reynolds to Harvey, Harvey acquired the sole right to mine for himself and his assigns, free of cost or compensation, for the purposes specified. The right was an incorporeal and indivisible hereditament in Reynolds' undivided half interest. It gave Harvey no title to the ore in place. The word "sole," in the term "sole right," is not used in the sense that it excluded Reynolds from the right to mine, for the deed expressly conferred that right upon him. It is descriptive of the right Harvey had in the ore, and excludes any other right thereto in him. The 99-year lease conveyed to the Pioneer Iron Company only an indivisible, incorporeal, and personal right to mine ore, and then only for such as it should
848 actually convert into merchantable iron at its own furnaces or forges. It granted only certain rights and privileges for a specific purpose. It prohibited assignment and the mining of ore for furnaces not owned by the company. It was not exclusive of the right of Harvey, his heirs and grantees, to mine for ore. Such rights may be assigned or conveyed in entirety, but not in severalty. "They may be appurtenant to another piece of land; as, for example, to a furnace property." Barringer & Adams, Law of Mines and Mining, p. 53; Silsby *v.* Trotter, 29 N. J. Eq., 228; Gloninger *v.* Franklin Coal Co., 55 Pa. 9, 93 Am. Dec., 720; Harlow *v.* Lake Superior Iron Co., 36 Mich., 105, 121, and authorities cited; Van Rensselaer *v.* Radcliff, 10 Wend. 639, 25 Am. Dec., 582. Whether the effect of the conveyances made by Harvey to the Pioneer Iron Company and to others effected a division of this incorporeal hereditament, we find it unnecessary to determine, as the case will be disposed of on other grounds. Was this right to mine ore under this lease appurtenant to the furnace then existing? It is true that the lease itself does not in express terms limit it to the then existing furnace. We must, therefore, look to the situation of the parties, the object in contemplation, and the surrounding circumstances, in determining the question. The lease speaks in the present tense. The furnace, with its two stacks, was then in existence. If, instead of the lease, Mr. Harvey had made a contract on September 17, 1857, to supply the furnace or furnaces of the Pioneer Iron Company with iron ore sufficient for its use, clearly such contract would be held to mean the furnace or furnaces as it or they then existed. If A. enter into a contract with B. to supply B.'s flouring mills for a series of years with sufficient wheat to keep them running, and B. have two mills, clearly the contract would mean that A. should supply B. with wheat for the mills then erected, and not for the mills he might thereafter erect. The same rule would hold if B. obtain from A. the right for a series of years to enter upon A.'s land and raise wheat for use in his mills. Harvey and the Pioneer Iron Company were dealing with things as they existed, and not with things that might exist thereafter. The preliminary agreement executed at the same time of the deed by Harvey to the Pioneer Iron Company limited the right to use the ores

mined "to its [the Pioneer Iron Company's] own establishment." A furnace may have one stack or more, in which case it is sometimes called furnaces and sometimes a furnace with stacks of a specified number. The Pioneer Iron Company's articles of association provide for only one furnace. It states the purpose for which the corporation was organized to be that "of procuring a suitable location for a manufactory, and lands to furnish coaling facilities therefor in the upper peninsula of the State of Michigan, and working the same for the production
849 of merchantable iron." In each of the three written instruments, viz., the preliminary lease, the articles of association, and the 99-year lease, different terms are used interchangeably, meaning the same thing, viz., a furnace for the manufacture of pig iron. The circulars sent out by it on the formation of the company refer to but one furnace. If the above facts were insufficient to establish the character of the furnace with reference to which the parties contracted in the lease, its character is conclusively established by the contract made April 25, 1857, by the Pioneer Iron Company with the Jackson Iron Company, by which the latter agreed to supply the former with ore for the manufacture of pig iron. It was recited therein that the Pioneer Company proposed "to erect and build a blast furnace establishment of one or two stacks for manufacturing pig iron near the Jackson iron mine." Is it reasonable to suppose that Harvey intended to confer upon the Pioneer Iron Company the right to erect as many furnaces as it chose, and obtain ore for them all from this land? If this be the construction of the lease, then Harvey conveyed to the company the right to use all the ore found in his land, provided it could erect enough furnaces to use it. It is unreasonable to hold that such was the intent of the parties. The undoubted consideration for this lease was the exploration and development of iron ore upon the lands by the company, the discovery and development of which would redound to the benefit of the lessor. There must have been some consideration moving from this company to Harvey to induce him to make the lease, other than the nominal consideration expressed in it. The learned counsel for defendants attempt to show that the $25,000 paid for the deed was also the consideration paid for the lease. The record fails to establish any such claim. On the contrary, it conclusively appears that the standing timber upon the lands conveyed by the deed was then worth more than the $25,000, the consideration expressed therein and paid. Furthermore, Harvey, one of the company's incorporators, its agent and its witness, testified positively that but one furnace was in contemplation when the articles of association and the 99-year lease were executed. We therefore conclude that the Pioneer Iron Company contemplated, provided for, and erected only one furnace with two stacks; that the parties contracted with reference to that furnace; and that the mining right conveyed was appurtenant to the furnace.

6. By the voluntary act of the defendant companies, who, since

1866, operated it, the furnace was dismantled in 1894, and totally destroyed. It has never been rebuilt, and there evidently was no intention to rebuild it. The abandonment and destruction of the furnace also destroyed the appurtenant right to mine the ore under the lease. Nothing was left for the right to be appurtenant to. When the principle is destroyed, the appurtenant rights go with it; or, as one author puts it, "When the substance disappears, its shadow vanishes." Day *v.* Walden, 46 Mich. 575, 10 N. W. 26; Jones *v.* Van Bochove, 103 Mich. 98, 61 N. W. 342. The doctrine of abandonment is sufficiently discussed in these two cases and the authorities there cited.

7. Soon after the execution of the 99-year lease, the Pioneer Iron Company made some explorations upon certain portions of the land covered thereby, found ore, but not in paying quantities, abandoned the explorations, and for full 43 years made no other attempt to avail itself of this mining right. In 1866 it conveyed to the Iron Cliffs Company by lease for a period of 10 years "all its iron-works, buildings, lands, and rights," etc. (reserving, however, certain rights and privileges not necessary to mention), and provided by the lease that dividends should be paid directly to its stockholders, rather than into its treasury. The Iron Cliffs Company afterwards became the owner of all its stock, and thereafter carried on the furnace business. The Pioneer Iron Company never thereafter took any control of its furnace. It was regarded as merged in the Iron Cliffs Company. So notorious was this that in the year 1877 the commissioner of mineral statistics, in his first annual report, speaking of this company, said: "The Pioneer Iron Company, by whom the furnace was built, became subsequently merged into the Iron Cliffs Company." In subsequent reports it was referred to as "absorbed by the Iron Cliffs Company." The officers of the Pioneer Company thereafter neither made nor filed any reports as the law expressly required them to do. Meanwhile, commencing about the year 1870, the grantees of Reynolds and Harvey, through themselves and other parties, spent large sums of money in exploration, and discovered in subsequent years valuable deposits; mining corporations were formed and leases made to them, and valuable mines developed by them; during all of which time the Pioneer Iron Company stood by in silence, asserting no right under its lease. Whether such nonuser amounted to an absolute abandonment under the rule in Day *v.* Walden, *supra*, we need not determine. That leases of this character may be abandoned and forfeited by nonuser is established in Porter *v.* Noyes, 47 Mich. 55, 10 N. W. 77, at least as to those who have purchased or leased from the lessor, entered upon the land, developed mines, and made valuable improvements. There is certainly force in the claim that the failure to use a personal, unassignable and, incorporeal right to take ore appurtenant to a furnace is abandoned by the failure to exercise that right for 43 years; especially where the right was once exercised and abandoned. Whatever may be the rule as between the lessor and the lessee where

neither has taken any steps to exercise the right to mine as between such lessee and subsequent lessees and grantees of
851 the lessor, who have in good faith expended large sums in developing mines, the lessee is estopped to assert his personal and incorporeal right. In an opinion obtained by the defendants in 1890 from Mr. W. P. Healy, a lawyer, who was once interested in these lands, he said: "I am also clear that the Pioneer Iron Company can never enter and appropriate the discovery of another. They cannot stand by until others have discovered a valuable deposit of ore, and then commence mining a portion of it"—which opinion meets our approval. The case of East Jersey Iron Co. *v.* Wright, 32 N. J. Eq. 248, is similar in many respects to this case, and the language there used is equally applicable here: "There are persons who will stand by and see large expenditures incurred in such operations, intending, if the venture turns out successful, to set up a claim, but, if otherwise, to have nothing to do with it. Such persons have no right to the aid of a court of conscience." The charter of the Pioneer Iron Company expired by limitation April 2, 1887. The constitution, at the date of its organization and at the expiration of its charter, expressly prohibited the organization of corporations beyond the period of 30 years. No provision then existed, either by the constitution or by the statute, authorizing a reorganization of corporations which had expired by limitation. A constitutional amendment was adopted in 1889, authorizing the legislature to provide by general laws for one or more extensions of the term of such corporations, and also for the reorganization "for a further period not exceeding 30 years of such corporations whose terms have expired by limitation, on the consent of not less than four-fifths of the capital." Pursuant to this authority, the legislature in 1889 passed an act authorizing such reorganization. 2 Comp. Laws, § 7035. Very important questions are raised by counsel as to the effect of this reorganization statute, the validity of the act of reorganization by the Pioneer Iron Company, as to whether the Pioneer Iron Company was in position to avail itself of this statute, and also the effect upon the 99-year lease should the reorganization be held to be valid. Inasmuch, however, as these questions are not essential to a decision of the case, we refrain from determining them.

Decree affirmed, with costs. The other justices concurred.

CLAUDIUS B. GRANT.
JOSEPH B. MOORE.
FRANK A. HOOKER.
WILLIAM L. CARPENTER.
R. M. MONTGOMERY.

(Endorsed:) Filed September 15th, 1903.

852 At a session of the supreme court of the State of Michigan, held at the supreme court room, in the capitol, in the city of

Lansing, on the fifteenth day of September in the year of our Lord one thousand nine hundred and three.

Present: The Honorable Frank A. Hooker, chief justice; Joseph B. Moore, William L. Carpenter, Claudius B. Grant, Robert M. Montgomery, associate justices.

Decree.

NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG, and Mary Kaufman, Complainants, *vs.* THE IRON CLIFFS COMPANY, THE CLEVELAND CLIFFS Iron Company, William G. Mather, and Murray M. Duncan, Defendants and Appellants.	No. 19527.

This cause having been brought to this court by appeal from the circuit court for the county of Marquette, in chancery, and having been argued by counsel, and due deliberation had thereon, it is now ordered, adjudged and decreed by the court, that the decree of the circuit court for the county of Marquette, in chancery, be and the same is hereby in all things affirmed. And it is further ordered, adjudged and decreed that the complainants do recover of and from the defendants, their costs to be taxed.

853 STATE OF MICHIGAN:

Supreme Court. In Chancery.

NEGAUNEE IRON COMPANY, EDWARD N. Breitung, and Mary Kaufman, Complainants, *vs.* IRON CLIFFS COMPANY, THE CLEVELAND-Cliffs Iron Company, Murray M. Duncan, and William G. Mather, Defendants.	Petition for Allowance of Writ of Error.

To the Honorable Frank A. Hooker, chief justice of the supreme court of the State of Michigan:

Now come William G. Mather, The Cleveland-Cliffs Iron Company, The Iron Cliffs Company and Murray M. Duncan, the abovenamed defendants, and allege that they are citizens of the United States of America; that heretofore, towit, on the 5th day of October, 1901, there was tried in the circuit court for Marquette county, Michigan, a suit in which The Negaunee Iron Company, Edward N. Breitung and Mary Kaufman were complainants and William G. Mather, Murray M. Duncan, The Iron Cliffs Company and The

Cleveland-Cliffs Iron Company were defendants. By their bill of complaint in said suit the complainants alleged that a certain 99-year lease theretofore executed by one Charles T. Harvey to the Pioneer Iron Company—a corporation, organized under the laws of the State of Michigan,—had expired and been forfeited and they prayed that the same be found to have terminated and that it be cancelled, set aside and held for naught as a cloud upon complainants' title, and further that defendants be perpetually enjoined and restrained from setting up in the name of said Pioneer Iron Company or in any other manner any right or title under said lease from said Charles T. Harvey to said Pioneer Iron Company in or to said lands and from entering upon or removing from said lands any iron ore or marble and for such other and further relief as to the court shall seem meet and proper.

The defendants answered therein and among other things certain of defendants alleged that they were officers and large stockholders in said Pioneer Iron Company; that said Pioneer Iron Com-
854 pany was a duly organized and existing corporation and was the owner of said 99-year lease, the same being but partly expired, and that, should the court, without the presence of said Pioneer Iron Company as a party to said suit, decree the forfeiture, termination or expiration of said 99-year lease in any way affecting the rights of said Pioneer Iron Company thereunder, said stockholders, defendants therein, and said Pioneer Iron Company would thereby be deprived of their and its property without due process of law,—in violation of article 14 of the Constitution of the United States; and that a decision limiting, terminating, changing, modifying, annulling or diminishing the value of any of the rights of said Pioneer Iron Company under said 99-year lease would be void and of no effect under said provision of the Constitution of the United States.

Said circuit court, on consideration, held and determined, among other things, that it had jurisdiction and could proceed in said suit without the presence of said Pioneer Iron Company as a party thereto, and thereupon said court tried and decided the same and by its decree found, adjudged and determined that the corporate term of the existence of said Pioneer Iron Company expired April 2, 1887, at which time all unassignable incorporeal rights personal to said company then existing were terminated and ceased to exist; that the necessary effect of conveyances by said Pioneer Iron Company was to destroy the incorporeal right obtained by the Pioneer Iron Company from Harvey in his undivided one-half of the minerals, (the 99-year lease), and that defendants, William G. Mather and Murray M. Duncan, without legal authority and contrary to equity and good conscience instigated and directed the trespasses complained of in complainant's bill of complaint and under the direction and employment of said Mather and Duncan a large force of men entered and continued upon said lands of the complainants, digging up the soil and sinking test pits therein. And the court

thereupon ordered, adjudged and decreed that the defendants, their counselors, attorneys, solicitors and agents, and each and every of them, whether acting in their individual or representative capacity immediately vacate and remove from the lands described in the bill of complaint, and that they and each of them be, and they hereby are, perpetually enjoined from further entering upon said lands of the complainants for the purpose of exploring for or taking
855 therefrom any minerals or iron ore or for any purpose whatever without the consent and authority of the complainants.

Your petitioners further show that they duly excepted to said findings, judgment and decree and that thereafter they duly appealed said suit to the supreme court of the State of Michigan, it being the highest court of said State wherein said suit could be tried in law or in equity, and thereafter said defendants represented and asserted to said supreme court that said circuit court and said supreme court on appeal had no jurisdiction to proceed in said suit or to render any judgment therein or to decree the cancellation of said lease or to enjoin said defendants from asserting the rights of said Pioneer Iron Company in absence of said Pioneer Iron Company as a party to said suit. But your petitioners show that said supreme court determined and decided that said circuit court and on appeal said supreme court, had power and jurisdiction to proceed and adjudicate the rights of the party to said suit without the presence of the Pioneer Iron Company as a par*ties* thereto, and thereupon on the 15th day of September, 1903, at the session of said supreme court, after having duly heard and considered said case, said court ordered, adjudged and decreed that the decree therein of the circuit court of the county of Marquette in chancery be and the same is hereby in all things affirmed, and it further ordered and adjudged that complainants recover from defendants their costs, thereby finally finding, adjudging and decreeing that said 99-year lease so executed by said Charles T. Harvey to the Pioneer Iron Company be annulled, terminated and held for naught, and that these petitioners as individuals, stockholders and officers of said Pioneer Iron Company be perpetually enjoined from further entering upon said lands covered by said 99-year lease or from exploring or taking therefrom any minerals or iron ore or for any purpose whatever.

Your petitioners further show that by said judgment and decree of said supreme court of the State of Michigan the constitutional right asserted by these petitioners, that before taking or destroying the property, rights, privileges and franchises of said Pioneer Iron Company and of these petitioners as stockholders and officers therein, said Pioneer Iron Company and through it these petitioners should have their day in court and that such property should not be taken without due process of law,—was denied them, by
856 reason of which there is raised and presented a Federal question, namely—

First. Whether the property, rights and privileges of said Pioneer

Iron Company, and connected with it the property and rights of your petitioners can be taken without due process of law; and

Second. Whether said court had jurisdiction and power to determine the aforesaid rights of said Pioneer Iron Company and these petitioners without the presence in said suit of said Pioneer Iron Company as a party thereto

Your petitioners further show that said judgment of said supreme court is a final judgment in the highest court of the State of Michigan in which a decision of said suit could or can be had, and that said Federal questions were duly set out and made in said case and the aforesaid judgment of the supreme court was contrary to the Federal rights so claimed, and that the decision of said Federal questions was necessary to the judgment rendered.

Wherefore, your petitioners pray that a writ of error from the Supreme Court of the United States may issue in this behalf to the supreme court of the State of Michigan; that a transcript of the record, proceedings and papers in this cause duly authenticated may be sent to the Supreme Court of the United States, and that the errors complained of may be reviewed by the Supreme Court of the United States and the judgment aforesaid of said supreme court of Michigan be reversed.

IRON CLIFFS COMPANY,
THE CLEVELAND CLIFFS IRON COMPANY,
MURRAY M. DUNCAN, AND
WILLIAM G. MATHER,
By HOYT, DUSTIN & KELLEY,
Attorneys for Petitioners.

The writ of error as prayed for in the foregoing petition is hereby allowed this third day of December A. D. 1903.

Bond for that purpose fixed at the sum of $1000.

Dated this third day of December A. D. 1903.

FRANK A. HOOKER,
Chief Justice of the Supreme Court of the State of Michigan.

857 STATE OF MICHIGAN:

Supreme Court. In Chancery.

NEGAUNEE IRON COMPANY, EDWARD N. Breitung, and Mary Kaufman, Complainants, *vs.* IRON CLIFFS COMPANY, THE CLEVELAND-Cliffs Iron Company, Murray M. Duncan, and William G. Mather, Defendants.	Order Allowing Writ of Error.

The above-entitled matter coming on to be heard upon the petition of William G. Mather, Murray M. Duncan, Iron Cliffs Com-

pany and the Cleveland-Cliffs Iron Company therein for a writ of error from the Supreme Court of the United States to the supreme court of the State of Michigan, and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present to the Supreme Court of the United States the questions presented by the record in said matter, it is ordered that a writ of error be, and it is hereby, allowed to this court from the Supreme Court of the United States, and that the bond presented by petitioner be, and the same, is hereby approved.

FRANK A. HOOKER,
Chief Justice of the Supreme Court of the State of Michigan.

By direction of the court.

858 STATE OF MICHIGAN:

Supreme Court. In Chancery.

WILLIAM G. MATHER, MURRAY M. DUNCAN, Iron-Cliffs Company, and The Cleveland-Cliffs Iron Company, Plaintiffs in Error,
vs.
NEGAUNEE IRON COMPANY, EDWARD N. Breitung, and Mary Kaufman, Defendants in Error.
} Assignment of Errors.

Now come William G. Mather, Murray M. Duncan, Iron Cliffs Company and the Cleveland-Cliffs Iron Company and respectfully submit that in the record, proceedings, decision and final judgment of the supreme court of the State of Michigan in the above entitled matter there is manifest error in this, to wit—

First. The supreme court of the State of Michigan erred in sustaining and affirming the decree and judgment of the circuit court for the county of Marquette, Michigan, finding and determining that the corporate term of existence of the Pioneer Iron Company expired April 2, 1887, at which time all assignable incorporeal rights of said company then existing were terminated and ceased to exist; that the 99-year lease, executed by Charles T. Harvey to the Pioneer Iron Company had been and was terminated and destroyed and that defendants and each of them, whether acting in their individual or representative capacities immediately vacate and remove from the lands in question, (covered by said 99-year lease), and perpetually enjoining said defendants and each of them from further entering upon said lands for the purpose of exploring for or taking therefrom any minerals or iron ore or for any purpose whatever,—said Pioneer Iron Company not having been made or become a party to said suit and not having been heard in defence of its said property or rights.

Second. Said supreme court of the State of Michigan erred in deciding and adjudging that it had jurisdiction to and could pass upon and adjudicate the rights of the parties to said suit, and in adjudicating the same without the presence of the Pioneer Iron
859 Company as a party thereto.

Third. Said supreme court erred in determining and deciding that it could terminate the lease executed by Charles T. Harvey to the Pioneer Iron Company and could cancel the same as a cloud upon the title of complainants in said suit, and that it had jurisdiction to adjudge the same to have been destroyed or terminated,—without the presence of the Pioneer Iron Company as a party to said suit.

Fourth. Said supreme court erred in finding, adjudging and decreeing, and by the affirmance of said decree of said circuit court, in holding that said lease so executed to the Pioneer Iron Company by said Charles T. Harvey was terminated,—said Pioneer Iron Company not having been a party to said action or having an opportunity to be heard in defence of its rights to said property.

Fifth. The action of said supreme court in affirming in all things the judgment and decree of said circuit court of Marquette county, Michigan, and thereby adjudging and decreeing the lease so executed by Charles T. Harvey to the Pioneer Iron Company and the rights of said company therein to be cancelled and terminated; ordering that defendants, officers and stockholders of said corporation, in their individual and representative capacities, to vacate the property in question; and perpetually enjoining said defendants as aforesaid from entering upon said lands for the purpose of exploring for or taking therefrom any minerals or iron ore or for any purpose whatever, and further thereby finding and adjudging that the corporate term of existence of said Pioneer Iron Company expired April 2, 1887,—is repugnant to and in conflict with article 14 section 1 of the Constitution of the United States, which declares,—"that no State shall make or enforce laws which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law,"—in that such decree and adjudication cuts off, destroys and extinguishes large property rights and interests of said Pioneer Iron Company and through it the value of the capital stock in said company held by defendants, and thereby further cuts off and destroys the franchises rights and interests of said company granted to
860 it by the State of Michigan, whereby the interests and property rights of its stockholders are diminished and almost totally destroyed, all without due process of law.

Wherefore, plaintiffs in error pray that a writ of error from the Supreme Court of the United States may issue to the supreme court of the State of Michigan; and further pray that the Supreme Court of the United States will reverse said final order, judgment and decree of the supreme court of the State of Michigan, and that these petitioners may be restored to all things which they have lost by

reason whereof, and that they have such further relief as may be proper and just.

WILLIAM G. MATHER,
MURRAY M. DUNCAN,
IRON CLIFFS COMPANY, AND
THE CLEVELAND CLIFFS IRON COMPANY,
By HOYT, DUSTIN & KELLEY,
Attorneys for Plaintiffs in Error.

861 UNITED STATES OF AMERICA, *ss:*

To Negaunee Iron Company, Edward N. Breitung, and Mary Kaufman, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Michigan, wherein Iron Cliffs Company, The Cleveland Cliffs Iron Company, William G. Mather and Murray M. Duncan are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Frank A. Hooker, chief justice of the supreme court of the State of Michigan, this third day of December, in the year of our Lord one thousand nine hundred and three.

[Seal of the Supreme Court of Michigan, Lansing.]

FRANK A. HOOKER,
Chief Justice of the Supreme Court of the State of Michigan.

STATE OF MICHIGAN, } *ss:*
County of Marquette, }

Samuel Bennett of said county being duly sworn, deposes and says, that on the 15th of December, 1903, he personally served the within citation upon Mary Kaufman at the city of Marquette in said county, by delivering a true copy of the same to her, and at the same time showing her this original with the seal of the court impressed thereon; that at the same time and place and in like manner he served said citation upon the Negaunee Iron Company by delivering a copy thereof to said Mary Kaufman as president of said company; that afterwards on the 19th of December he served the within citation upon Edward N. Breitung at said city of Marquette by de-

livering a copy of the same to him and showing him this original with the seal of the court impressed thereon.

SAMUEL BENNETT.

Subscribed and sworn to before me this 21st day of December, 1903.

WM. A. ROSS,
Notary Public.

My commission expires Dec. 26/04.

862 (Copy.)

Bond.

Know all men by these presents, that we, William G. Mather and Horace Andrews, as principals, and the Fidelity and Deposit Company of Maryland, as sureties, are held and firmly bound unto The Negaunee Iron Company, Edward N. Breitung and Mary Kaufman in the full and just sum of one thousand dollars, to be paid to the said Negaunee Iron Company, Edward N. Breitung and Mary Kaufman, their certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this third day of December in the year of our Lord one thousand nine hundred and three.

Whereas, lately at a session of the supreme court of the State of Michigan in a suit depending in said court, between The Negaunee Iron Company, Edward N. Breitung and Mary Kaufman, complainants, and The Iron Cliffs Company, The Cleveland Cliffs Iron Company, William G. Mather and Murray M. Duncan, defendants and appellants, a decree was rendered against the said Iron Cliffs Company, The Cleveland Cliffs Iron Company, William G. Mather and Murray M. Duncan, and the said Iron Cliffs Company, The Cleveland Cliffs Iron Company, William G. Mather and Murray M. Duncan, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Negaunee Iron Company, Edward N. Breitung and Mary Kaufman citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if
863 the said William G. Mather, Murray M. Duncan, The Iron Cliffs Company and The Cleveland Cliffs Iron Company shall prosecute said writ of error to effect, and answer all damages and

costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

WILLIAM G. MATHER, [SEAL.]
By HORACE ANDREWS,
His Attorney in Fact.
HORACE ANDREWS. [SEAL.]
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By SEYMOUR FOSTER,
Member of Local Board.
[CORPORATE SEAL.]

Sealed and delivered in presence of—
CHAS. C. HOPKINS.
O. A. JENISON.

Approved by—
FRANK A. HOOKER,
Chief Justice of the Supreme Court of the State of Michigan.

(Endorsed:) Filed Dec. 17, 1903 Chas. C. Hopkins, clerk supreme court.

864 UNITED STATES OF AMERICA, *ss.*:

The President of the United States of America to the honorable the judges of the supreme court of the State of Michigan, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Negaunee Iron Company, Edward N. Breitung and Mary Kaufman, complainants, and The Iron Cliffs Company, The Cleveland Cliffs Iron Company, William G. Mather and Murray M. Duncan, defendants and appellants wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein
865 was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed

under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said defendants as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the third day of December, in the year of our Lord one thousand nine hundred and three.

{ Seal of the U. S. Circuit Court, Western District of Mich., Southern Division. }

CHARLES L. FITCH,
Clerk U. S. Circuit Court, West. Dist. Mich.

Allowed by

FRANK A. HOOKER,
Chief Justice Sup. Court Mich.

866 Filed Dec. 3, 1903.

CHAS. C. HOPKINS,
Clerk Supreme Court of Michigan.

To the Supreme Court of the United States:

The execution of the within writ appears by the transcript of record hereto annexed.

Dated Dec. 26, 1903.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,
Clerk Supreme Court of the State of Michigan.

867 Supreme Court of the State of Michigan.

THE NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG, and Mary Kaufman, Complainants and Defendants in Error,
vs.
THE IRON CLIFFS COMPANY, THE CLEVELAND CLIFFS IRON Company, William G. Mather, and Murray M. Duncan, Defendants and Plaintiffs in Error.

STATE OF MICHIGAN, *In Supreme Court,* } ss:

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of the record and of all proceedings had and entered in the above entitled cause by said court, including the written decision and reasons therefor, signed by the judges of said court, and filed in my office, as appears of record and on file in said cause; that I have compared the same with the original, and it is a true transcript therefrom and of the whole thereof; that attached thereto are the writ of error, with allowance endorsed thereon the petition for allowance of the writ, the citation, with proof of service of copy thereof on adverse party, and a bond to said adverse party duly approved, together with the assignment of errors in the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at Lansing this twenty-sixth day of December in the year of our Lord one thousand nine hundred and three.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,
Clerk Supreme Court of the State of Michigan.

Endorsed on cover: File No. 19,198. Michigan supreme court. Term No. 173. Iron Cliffs Company, The Cleveland Cliffs Iron Company, William G. Mather, & Murray M. Duncan, plaintiffs in error, *vs.* Negaunee Iron Company, Edward N. Breitung, & Mary Kaufman. Filed January 15", 1904. File No. 19,198.

No. 173.

Supreme Court of the United States.

THE IRON CLIFFS COMPANY, ET AL.,

PLAINTIFFS IN ERROR.

vs.

NEGAUNEE IRON COMPANY, ET AL.,

DEFENDANTS IN ERROR.

Brief for Plaintiffs in Error

HOYT. DUSTIN & KELLEY,

Attorneys for Plaintiffs in Error.

No. 173.

Supreme Court of the United States.

THE IRON CLIFFS COMPANY, THE CLEVELAND-CLIFFS IRON COMPANY, WILLIAM G. MATHER AND MURRAY M. DUNCAN,

PLAINTIFFS IN ERROR.

vs.

NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG AND MARY KAUFMAN,

DEFENDANTS IN ERROR.

Brief for Plaintiffs in Error.

THE FEDERAL QUESTION.

1. The property of plaintiffs in error, William G. Mather and The Iron Cliffs Company, as stockholders in the stock of the Pioneer Iron Company, was taken without due process of law.

2. The property of plaintiffs in error was so taken by judgment of the Courts of the State of Michigan, declaring terminated, cutting off, and destroying the use and interest of the Pioneer Iron Company in a ninety-nine

year lease of great value, a large proportion of the property of said company. Said Pioneer Iron Company was not a party to said suit. Neither said company nor its stockholders, including said plaintiffs in error, were represented or permitted an opportunity to appear and defend their corporate property rights.

3. The federal question here involved was raised in said State Courts on behalf of both William G. Mather and The Iron Cliffs Company, who were and are owners of the stock in the Pioneer Iron Company. Said question was presented to and considered by said State Courts where it was decided adversely to the claims made by said defendant stockholders.

4. The fact that the state Courts considered and passed upon the federal question involved, leads to the conclusive presumption that such question was properly raised in such state Courts by the stockholders who were defendants below. The allowance of the writ of error herein by the Supreme Court of Michigan raises a like presumption.

5. No non-federal question could have been decided against the Pioneer Iron Company which was not a party to the suit. No judgment could have been rendered by the state Courts affecting the property rights of the Pioneer Iron Company which did not *necessarily involve* the federal question here raised.

THE FACTS.

The property of the Pioneer Iron Company was taken, and thereby, the value of its stock decreased — without due process of law.

The Pioneer Iron Company, as hereinafter shown, owned a ninety-nine year lease, granting to it the right to mine for iron ore upon certain large tracts of land in Marquette County, Michigan.

This suit was begun in the Circuit Court of Marquette County, Michigan, to obtain a decree; (1.) *Declaring said lease to the Pioneer Iron Company "terminated and of no binding force or effect against" the complainants;* (2.) *That said lease be cancelled as a cloud upon complainants' title and that said title to all the iron ore and marble in and upon said lands be quieted and confirmed in complainants;* and (3.) *That complainants be granted a perpetual injunction, preventing defendants, who were parties to the suit, from setting up in the name of the Pioneer Iron Company, or in any other manner, any right or title under said lease from Charles T. Harvey to the Pioneer Iron Company, and from entering upon said lands or removing therefrom any iron ore, etc.* (Record, pages 11, 12.)

The relief thus asked was predicated upon numerous allegations of acts and defaults of the Pioneer Iron Company, which were claimed to result in the termination of all rights of said company under said lease; and the further allegations that defendants, claiming to act as stockholders, directors and agents of said company were wrongfully asserting, in its name, its existing right under said lease and were

in the act of mining and removing iron ore from said premises.

The Pioneer Iron Company was not a party to said suit.

THE CIRCUIT COURT of Marquette County, Michigan by its decree, proceeded to and did pass upon the rights of the Pioneer Iron Company under said lease, and found and adjudged that it had forfeited its rights therein and thereunder, and that the same was terminated and had ceased to exist. (Record, pages 556, 557, 558, 559).

Based upon such findings said Court determined, (Record, page 559), that defendants *William G. Mather and Murray M. Duncan,* were trespassers upon the property in question.

Said Court thereupon, "in consideration of the foregoing findings and determinations of the Court concerning the particular matters set forth in complainants' bill of complaint," ordered, adjudged and decreed

> "that the defendants, their counselors, attorneys, solicitors and agents, and each and every of them, whether acting in their individual or *representative capacity*, immediately vacate and remove from the lands described in the bill of complaint, and that they and each of them be and they hereby are perpetually enjoined from further entering upon said lands of complainants for the purpose of exploring or taking therefrom any minerals or iron ore, or for any other purpose whatever without the consent and authority of complainants."

THE SUPREME COURT of the State of Michigan by its

decree, (Record, page 577), "ordered, adjudged and decreed that the decree of the Circuit Court of Marquette County in Chancery be, and the same is hereby, in all things, affirmed."

The net result of the litigation is this; that by the judgments of the Courts of the State of Michigan the ninety-nine year lease from Harvey to the Pioneer Iron Company has been terminated; and its officers, whether acting individually or *as representatives of the Pioneer Iron Company*, are perpetually enjoined from asserting the rights of said company under said lease by entering upon the premises or prosecuting the work of mining thereon.

Said entire proceeding and litigation was in absence of the Pioneer Iron Company as a party to the suit.

FEDERAL QUESTION RAISED.

As hereinafter on pages 28-31 of this brief shown, the defendants at every step asserted by answer and otherwise the existence of the Pioneer Iron Company and its ownership of the lease in question; and defendant, William G. Mather, acting for himself and for The Iron Cliffs Company, (whose stock was held by him in trust), alleged;

> "That said Mather was a stockholder in said Pioneer Iron Company, personally *and as trustee*, and that to decree the forfeiture,termination or expiration of the ninety-nine year lease, to limit, annul or diminish its value, — said Pioneer Iron Company not being made a party to the suit, — would deprive said stockholders of their property without *due process of law*, in violation of their rights under the Constitution of the United States." (Record, pages 51, 52).

The federal constitutional question was in this way, and repeatedly otherwise, set up and claimed. In every brief and argument filed and made this right was asserted. By their respective opinions both the Circuit Court of Marquette County, (Record, pages 554, 555), and the Supreme Court, (Record, page 569), considered it and decided it against the plaintiffs in error.

THE PIONEER IRON COMPANY, — ITS REORGANIZATION AND PROPERTY.

The Pioneer Iron Company was incorporated in the year 1857 under the laws of the State of Michigan, (Record, page 1-16); its corporate powers being then by constitutional provision limited to the period of thirty years.

Provision was and is made by the law of Michigan as follows:

> "(8534) *Sec.* 8. All corporations, whose charters shall expire by their own limitation, or shall be annulled by forfeiture or otherwise, shall nevertheless, continue to be bodies corporate for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock; but not for the purpose of continuing the business for which such corporations have been or may be established."

Subsequently, before the extension of the Pioneer Iron Company by its reorganization, the constitution of Michigan was amended as follows:

Art. 15, *Sec.* 10. "No corporation, except for municipal purposes, or for the construction of railroads, plank roads and canals, shall be created for a longer time than thirty years; but the legislature may provide by general laws, applicable to any corporations, for one or more extensions of the term of such corporations while such term is running, not exceeding thirty years for each extension, on the consent of not less than a two-thirds majority of the capital of the corporation; *and by like general laws for the corporate reorganization for a further period not exceeding thirty years, of such corporations whose terms have expired by limitation, on the consent of not less than four-fifths of the capital;* Provided, That in cases of corporations where there is no capital stock, the legislature may provide the manner in which such corporations may be reorganized."

Thereupon, before the reorganization of said company, the legislature of the State of Michigan duly enacted a statute of said state, providing as follows:

"(7035) Section 1. *The People of the State of Michigan enact,* That it shall be lawful for any corporation heretofore or hereafter organized under the general laws of this state for mining, smelting or manufacturing purposes, whose corporate term has expired, or shall expire by limitation, at a special meeting of its stockholders called for that purpose, by a vote of at least four-fifths of its capital stock, to direct the continuance of its corporate existence for such further term, not exceeding thirty years from the expiration of its former term, as may be expressed in a resolution for that purpose. Such meeting may be called in accordance with the by-laws of the corporation and the laws of this state

applicable to the same class of corporations whose term has not expired, by order of the directors de facto of the corporation. Upon the adoption of such resolution by a vote in person, or by proxy duly filed, of a majority of at least four-fifths of the capital stock, it shall be the duty of the president and secretary of the stockholders' meeting to make, sign and acknowledge duplicate articles of association, as in the case of a new corporation, to which shall be appended a copy of the proceedings of such stockholders' meeting certified by the secretary and verified by his oath, which articles of association shall be filed with the secretary of state and with the county clerk of the county where the corporation carries on its business, and be by both recorded in their respective offices, at the expense of said corporation; and the copies so filed, the record thereof, or a certified copy of either of such records shall be *prima facie* evidence of the facts therein recited; but said articles of association need not set forth in the case of corporations existing under the provisions of chapter one hundred and twenty-three of Howell's annotated statutes, the cash value of property conveyed to the corporation contemporaneously with its re-organization, nor the names of the directors for the first year; Provided nevertheless, That this act shall not be applicable to any corporation whose term may expire after this act takes effect, unless its meeting be held within two years after such expiration; nor to any corporation whose business has been or may be wound up and property sold pursuant to the voluntary action of the stockholders or of any Court of competent jurisdiction; Provided, That no corporations, except corporations organized to carry on business in the counties of Houghton, Keweenaw and Ontonagon, shall be permitted to reorganize hereunder which for the past ten years

have ceased to carry on the business for which they were organized.

(7036) *Sec.* 2. The renewed term of such corporation shall begin from the expiration of the former term thereof, and the corporation thus renewed shall hold and own all the property held and owned by the corporation before renewal, and shall be liable to all its debts, liabilities and obligations as fully as if the former corporate term had not expired; and the directors and officers, who were such in fact at the time of the meeting, shall hold and continue in their offices until their successors shall be elected and shall qualify; Provided, nevertheless, That if the call for the meeting to extend the corporate term shall embrace a notice that a number of the directors will be elected at such meeting, such election may be then held accordingly, and the directors then elected shall, when they shall qualify, become and be the directors of such renewed corporation."

In the year 1889, (and subsequently as shown by the record), under and by authority of the constitution and laws of the State of Michigan, the Pioneer Iron Company took the necessary steps and proceedings and duly reorganized said corporation, thereby extending its term for a second period of thirty years.

Such reorganization is shown by the record without contradiction; *first,* by amendment to complainants' bill, (Record, pages 49, 50), and, *second,* by the introduction of the certified copies of the records of the Secretary of State of the State of Michigan, showing such re-organization, (Record, pages 295-303, also pages 517-545).

Every step required by the law of Michigan was thus taken to re-organize and continue the corporate powers, existence and right of said company. The State of Michigan has never questioned the corporate existence of the Pioneer Iron Company.

It was also established by the evidence that there was no cessation by the Pioneer Iron Company of an active and extensive business, not only before, but after the year 1889, up to the present time.

Record, page 369. It is shown that the Pioneer Iron Company was executing options and mining leases.

Record, page 375. Is an important contract between the Pioneer Iron Company and the Arctic Iron Company, dated September, 1889.

Record, pages 382-384. Is a list, about one hundred and forty, of deeds and conveyances, extending from the year 1873 continuously down through the year 1896.

Record, page 385. It is shown that the Pioneer Iron Company owned and was then operating a furnace at Marquette, Michigan.

Record, pages 386, 387. Is the deed of conveyance of said furnace at Marquette, from the Carp River Furnace Company to the Pioneer Iron Company, dated January 3, 1900.

Record, page 392. Shows the dealing in royalties from 1887 to April 1891.

Record, page 400. Shows a deed executed by the Arctic Iron Company to the Pioneer Iron Company, dated September 14, 1889.

Record, page 404. Shows the proceedings and expenses in a tax case, in which, in the year 1899, the Pioneer Iron Company, was interested together with complainant Edward N. Breitung.

On Record, page 102 is a copy of the two notices given by complainants in this suit, directed to the Pioneer Iron Company, — all conclusively showing the recognized and actual corporate existence of the company as a going concern under the laws of Michigan.

The record is further full of transactions of business by the Pioneer Iron Company continuously up to the beginning of this suit.

THE NINETY-NINE YEAR LEASE.

In the year 1857 Charles T. Harvey, by duly executed conveyance, granted to the Pioneer Iron Company a lease to mine iron ore for ninety-nine years on the lands in question. This lease was duly recorded. It is set forth in full as a part of the complainants' bill, (Record, pages 18, 19, 20). Said lease contains the provisions that; "The rights and easements above mentioned *shall descend to the corporate successors of the party of the second part,* but not to its assigns." (Record, page 20).

The Pioneer Iron Company, as reorganized and so extended, continued to assert its rights in said lease, it being the sole owner and the only person interested as lessee therein.

More than *fifty years of the term* of said lease was yet unexpired when this suit was brought, and it is admitted that the lands in question are underlaid with iron ore, making this leasehold interest of great value.

It is this lease, and the interest of the Pioneer Iron Company, thereunder, that complainants below sought to set aside and destroy, and which by the judgment of the state Courts was declared terminated in absence of the Pioneer Iron Company.

Argument

RIGHTS OF PIONEER IRON COMPANY INVADED.

We will show that the constitutional rights of stockholders, plaintiffs in error, are practically identical with the rights of the corporation. Such rights are therefore violated when the property of the corporation is taken without due process of law.

The question here presented then is this; Could the rights of the Pioneer Iron Company in the ninety-nine year lease be litigated and decided in a suit to which it was not a party? Could the Courts of Michigan legally, *in the absence of the Pioneer Iron Company,* proceed to find that its rights to mine under said lease, had terminated, and to perpetually enjoin its stockholders, officers and agents both individually and *as representatives of said company* from going upon said property for any purpose?

The record shows that this company was organized and was later reorganized and its corporate powers extended under the express provisions of the constitution and laws of Michigan, and that the same was and now is recognized by the state itself.

Complainants admit that the ninety-nine year lease was granted to the Pioneer Iron Company, and if anybody now

owns or could own the same, that owner is the existing reorganized corporation.

The lease itself has yet fifty years to run, — it in terms "*descended to the successors of the Pioneer Iron Company*" The law of Michigan provides that the corporation, as reorganized, should continue to hold and own the corporate property, hence the Pioneer Iron Company now reorganized is either the original corporation with its corporate existence extended, or it is the successor of the original corporation; and in either case it holds the ninety-nine year lease.

Under these facts could this lease be legally decreed to have terminated, and the property of the Pioneer Iron Company therein be cut off or affected directly or indirectly in a suit to which said company was not a party? and how could a decision injuriously affecting those rights be entered in such a suit without necessarily involving the federal question?

There might be room for lawyers and Courts to differ as to the property rights now existing in the corporation, and as to the merits of its claims when heard, but that is not the question here. The question is; Has the corporation *the right to be heard* before judgment is entered against it? and can any such judgment be rendered in a suit between complainants and third parties, even the stockholders of said company, but to which suit the corporation is not itself a party and if any such judgment or decree has been entered in any such suit, does it not necessarily follow that the constitutional rights of the Pioneer Iron Company have been involved?

We know the answer which complainants below attempt to make to this contention. They did not make the Pioneer Iron Company a party to the proceeding because, they

claim, that if they had done so they would have recognized its legal existence, which in this proceeding it was inconvenient for them to do. It is a sufficient answer to this contention to say, if the legal existence of the Pioneer Iron Company is called into question, that it must be done in a proper proceeding. The legal existence of the Pioneer Iron Company does not depend upon the recognition of it by defendants in error, but upon the recognition of the state; and while and so long as the state recognized the Pioneer Iron Company as a living corporation, it does not lie in the mouth of any creditor or claimant against the Pioneer Iron Company to dispute its existence. It would have been entirely competent for the complainants, if they had seen fit, to have had the corporate existence of the Pioneer Iron Company properly determined in any other proceeding, like a quo warranto proceeding brought by the state, *but as long as the Pioneer Iron Company is recognized by the state it is impossible for any complainants to cut off its rights in a proceeding to which the Pioneer Iron Company is not itself a party.*

The Law.

(1.) It is the settled law, firmly established by a long and unbroken line of decisions that

A Court can make no decree affecting the rights of an absent person, and can make no decree between the parties before it, which so far involves or depends upon the rights of an absent person that complete and final justice cannot be done between the parties to the suit without affecting those rights.

Shields v. Barrow, 17 Howard, 130, 141;
Mallow v. Hinde, 12 Wheaton, 198;
California v. Southern Pacific Co. 157 U. S. 229-248, 251;
Minnesota v. Northern Securities Co., 184 U. S., 199-237.
Water Co. v. Babcock, 76 Fed. Rep., 243, 248, 249, 252.

(2.) An adjudication between parties to a suit, which involves or affects the property rights of persons who are not before the Court, violates the constitutional provision preventing the taking of property without due process of law.

Taylor & Co. v. Southern Pacific Co., 122 Fed Rep., 147, 152;
Water Works v. New Orleans, 164 U. S., 480;
Pennoyer v. New, 95 U. S., 714, 733;
Windsor vs. McVeigh, 93 U. S., 264-277.

In the case of *Shields v. Barrow*, 17 Howard, 130, see opinion 139, this Court used the following language:—

> "The Court here points out three classes of parties to a bill in equity. They are: (1.) Formal parties; (2.) Persons having an interest in the controversy and who ought to be made parties in order that the Court may act on that rule which requires it to decide on, and finally determine the entire controversy, and do complete justice by adjusting all the rights involved in it. These persons are commonly termed necessary parties; but if their interests are separable from those of the parties before the Court, so that the Court can proceed to a decree and do complete and final justice without affecting other persons not before the Court, — the latter are not indispensable parties. (3.) *Persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience.*"

Parties of the third class, the Court hold to be indispensable.

On page 141 of the same opinion the Court proceeds with the following language, quoting *Mallow v. Hinde*, 12 Wheaton 198, when speaking of a case where an indispensable party was not before the Court:

> "We do not put this case upon the ground of jurisdiction, but upon a much broader ground, which must equally apply to all Courts of equity whatever may be their structure as to jurisdiction; we put it on the ground that no Court can adjudicate directly upon a person's rights without the party being either actually or constructively before the Court."

In the same decision and reaching the conclusion which has been subsequently so often followed, this Court, on page 141, further said:

> "It remains true notwithstanding the Act of Congress and the 47th Rule that a Circuit Court can make no decree affecting the rights of an absent person, and can make no decree between the parties before it which so far involves or depends upon the rights of an absent person that complete and final justice cannot be done between the parties to the suit without affecting those rights."

To the same effect is *California v. The Southern Pacific Co.*, 157 U. S., 229, see pages 248-251, where Chief Justice Fuller strongly asserts this principle of legal right, and reviews and affirms the foregoing decisions. On pages 255, 256, the application of the same is made to the case under consideration, in language peculiarly adapted to this present suit, and the Court refused to permit the litigation to go forward because of the effect it would have upon the rights of absent parties.

In *Minnesota v. Northern Securities Co.*, 184, U. S., 199-237, the same line of decisions is again affirmed; and the Court bases its judgment in dismissing the proceeding, upon the principle that there exists *no power to adjudicate the rights of parties not in court*, — or to adjudicate the rights of parties before the court, — where the rights of third parties are necessarily connected with and affected by the litigation.

A review of this entire line of decisions is also found in *Water Company v. Babcock*, 76 Federal Reporter, 243, 248, 249, 252.

In the case of *Taylor & Co. v. Southern Pacific Co.*, 122 Federal Reporter, 147, a suit was brought to enjoin the voting of certain stock at the election of directors of the Southern Pacific Co. Various of the persons interested were not made parties to the suit; but it was urged upon the Court that a decree might be rendered against those who were parties and especially against the Southern Pacific Co.

Judge Lurton, in an opinion of great strength and clearness, on page 152 uses the following language: "The principle of *due process of law* unconditionally compels observance of the rule which limits the just jurisdiction of every Court to a determination only of the rights of persons who are parties to the litigation." He then proceeds further to discuss the decisions of this Court establishing that general principle, basing it, among other cases, upon the holding in *Mallow v. Hinde*, 12 Wheaton, 198, and *Minnesota v. Northern Securities Co.*, 184 U. S., 199.

This principle is stated in *New Orleans Water Works vs. New Orleans*, 164 U. S., 471, see 480, where Mr. Justice Harlan, speaking for the Court says:

> "In absence of the parties interested and without their having an opportunity to be heard, the Court would be without jurisdiction to make an adjudication affecting them. Such a decree would appear upon the very face of the record not to be *due process of law*, and could be treated everywhere as a nullity."

The same principle is found decided in *Pennoyer v. Neff*, 95 U. S., 714, see 733; also in *Windsor v. McVeigh*, 93 U. S., 274, see 277.

In all litigations, the result of which must affect the property and rights of the corporation, this Court has held that the corporation itself though it has ceased to do business is an indispensable party,

Land & Cattle Co. v. Frank, 148 U. S., 603, see opinion 610.

There can be no doubt then that, *as against the Pioneer Iron Company* the judgment of the Courts of Michigan, determining its rights and stopping its use of the ninety-nine year lease in a suit to which it was not a party violates the principle recognized in all the foregoing decisions, and invades the constitutional rights of the Pioneer Iron Company.

All the defendants disclaimed that in asserting the right to mine upon said premises they were acting personally or that they acted otherwise than as stockholders, officers and agents of the Pioneer Iron Company.

That defendants below, (except The Cleveland-Cliffs Iron Company), *were* such stockholders, officers and agents of the Pioneer Iron Company was not questioned, otherwise than that *complainants denied the right of said corporation to extend its corporate existence under its reorganization of* 1889, — which had been effected and had been recognized by the State of Michigan for over twelve years. While complainants in their bill allege the expiration of the original charter of the Pioneer Iron Company, — by reason of which they claimed the termination of its rights, — yet they also by amendment, (Record, pages 49, 50), set forth the reorganization of such Company in 1889 under the Statutes of the State of Michigan. Subsequently, on the hearing both the complainants, (Record, pages 295-303), and de-

fendants, (Record, pages 517-545), introduced in evidence the certified articles of association, reorganizing said Company as a corporation;—

The question, therefore, whether defendants might mine iron ore upon the property depended on whether the Pioneer Iron Company, as reorganized, still owned the ninety-nine year lease and still had the right to mine under its terms. If the lease were valid and in force so that the Pioneer Iron Company had under it the right to mine, — defendants, officers of said company *could not be trespassers* in asserting its right to mine. Only by finding this lease to have terminated, could the injunction prayed for be granted against the officers and agents of said company.

Complainants in their bill recognized this to be the legal situation, and grounded their case upon acts of forfeiture and destruction of the lease, and the claim that such lease was not by its terms available to the Pioneer Iron Company *after its extension by reorganization,* — by reason of all of which it was averred that the property and rights in this lease no longer existed in the Pioneer Iron Company.

Upon this issue the case was heard, and the record discloses that the vast mass of testimony offered by complainants was mainly directed to an attack upon the rights of the Pioneer Iron Company in said lease; the defense was an assertion of those rights.

The Circuit Court of Marquette County treated this as the issue, and the decree which was affirmed *was almost entirely based upon findings of the rights of said Company.* (Record, pages 556-559.)

NECESSARY RESULTS OF JUDGMENT.

In such a suit and under the issues joined it is manifest that it would be impossible to make a decree determining the *rights of the parties before the Court* without necessarily affecting the rights and interests of the Pioneer Iron Company.

By declaring the lease forfeited by past acts, its value was gone. By declaring the lease inoperative because it was claimed to be appurtenant to an abandoned furnace, or because it was claimed that the same did not continue and remain the property of the corporation, as reorganized, the result to the Company was the same, namely; *the complete loss of its valuable property rights in this leasehold.*

By enjoining the stockholders, officers and agents of this Company and preventing them both personally and *as its representatives,* from operating under this lease, the company's use of the same is ended and the value to it was cut off and diminished.

The granting of *any* of the remedies prayed for presupposed the termination of the property rights of the Pioneer Iron Company, — or at the very least so great an interference as to impair the value and use of the leasehold. The *practical result and effect of the decree* which has been affirmed, is to completely terminate all vested property rights of this Iron Company.

Even should the Pioneer Iron Company attempt to regain its rights by litigation,—yet under the holdings of the Michigan Supreme and Circuit Courts, and the intimations contained in their opinions in this case, it would undoubtedly

meet the claim that its rights had been practically, if not in form, already adjudicated.

Even though technically the Pioneer Iron Company might yet go into other litigation with the hope of establishing its rights, yet its officers and agents are in the meantime by the decree complained of stopped from mining and obtaining iron ore; and while complainants are rushing forward their mining operations and depleting the ore, *years of this valuable leasehold are practically thereby and during such litigation cut off from the term.* So that not only is the business of the Company connected with its mines practically stopped during the litigation, but the *term of the lease is thereby actually shortened,* and its *value diminished.*

The Constitution of the United States, however, does far more than to guarantee to its citizens the simple right to litigate. It forbids the taking of their property without due process of law; and such we insist is the result of the action of the Courts of Michigan.

RIGHTS OF STOCKHOLDERS INVADED.

If the property of the Pioneer Iron Company was taken, by judgment in a suit to which it was not a party, — the property of the stockholders of that company was taken without process of law.

The stock of the Pioneer Iron Company could only be valuable because of the legal existence of that company, and the value and extent of its property, rights and privileges. Indeed, the corporation as a matter of equity holds its property in trust for the stockholders.

In 1st *Clark and Marshall on Corporations*, Sec. 7, G. P., 23, the following statement of the law is found:

> "Though the title to the property of a corporation is in the corporation and not in the stockholders, the stockholders are undoubtedly interested therein. Though the title is in the corporation, the beneficial interest is in the stockholders in proportion to their shares," also
>
> "For the same reason a stockholder is interested in an action by or against the corporation, although not technically a party thereto, etc. etc."

It must, therefore, follow that any judgment, affecting a corporation, which destroys the value or limits its use of its property, also injures the property of the stockholders and the value of their stock.

If the property of the Iron Company was taken and destroyed, or injuriously affected, the property of the stockholders was also taken. That the effect upon the stockholders was indirect does not vary the principle, — their property is none the less "taken" if its value is impaired.

Railway Co. v. Minnesota, 131 U. S., 458;
Gas Light & Coke Co. v. Cleveland, 71 Federal Reporter, 614.

The stockholders, and all of them therefore, have the constitutional right to proper legal representation in any suit where their property may be injured or taken.

Stockholders themselves have no power to appear for and represent a corporation as parties to a litigation, and cannot therefore protect its property.

Brunson v. Railway Co., 2 Wallace, 301, 302, 303;

Land Co. v. Frank, 148 U. S., 603, 604, 610;
Ex parte Cutting, 94 U. S., 22;
Shoe & Leather Co. v. Kurts, 34 Mich., 88;
Tabot v. Scripps, 31 Mich., 268;
1st Thompson on Corporations, Secs. 1071, 1080;
6th Thompson on Corporations, Secs. 7570, 7579.

Where a corporation or its property are attacked in Court, the stockholders have the constitutional right to be represented and to be defended in such suit *by the corporation itself through their chosen representatives and directors.*

Minnesota v. Northern Securities Co., 184 U. S., 199, see opinion 245, 246.

It therefore follows, that if the corporation did not have an opportunity to appear and defend its rights, its stockholders, were not defended. If the property of the Pioneer Iron Company was taken without due process of law, the property of its stockholders was also taken in the same manner.

This Court of last resort should, therefore, set aside the judgment of the State Courts. for want of proper parties.

Claims of Defendants in Error.

JURISDICTION OF THIS COURT.

Defendants in error deny the jurisdiction of this Court.

First: Because they claim that the federal question here involved was not asserted in behalf of any defendant stockholder of the Pioneer Iron Company except William G. Mather *personally;* that the record failed to show that William G. Mather was such stockholder; and that the State Courts had found against the ownership of stock by said William G. Mather, — by reason of which the federal question was not raised by a stockholder of the Pioneer Iron Company who could be injured by the judgment complained of.

Second: It is claimed that the judgment complained of was otherwise based upon non-federal questions.

Considering first the contention that the federal question here involved was not raised on behalf of a stockholder of the Pioneer Iron Company, we have to say that the incorrectness of the claim as to the facts, and the findings of the Court thereon, will manifestly appear. The jurisdiction of this Court, however, does not rest solely on a finding that William G. Mather was a stockholder of the Pioneer Iron Company, although such was and is the fact beyond dispute.

The answer for defendants below, and the opinions of the State Courts, show that the federal question was asserted in behalf of all defendant stockholders.

Defendants in Error asserted from the first to last of this case, and in their brief filed in this Court they yet assert, (defendants brief, page 11 and subsequent pages), that defendant below, The Iron Cliffs Company, was a large stockholder of the Pioneer Iron Company. They further in the Courts below asserted that William G. Mather was an officer of the Pioneer Iron Company, and that he held and owned stock belonging to the Iron Cliffs Company, as its trustee, (Record, page 555). There was no attempt at denial of either the official position of William G. Mather, or the ownership of stock by him, both personally and in trust. In fact, the complainants based an argument to the Courts of Michigan upon the claim and assertion that, — "William G. Mather *was President* of the Pioneer Iron Company, and the holder of a large majority of its stock as trustee for defendant, The Iron Cliffs Company, at the time of filing the bill." Their claim being that therefore said Pioneer Iron Company would be bound by the decree rendered, although not a formal party to the suit, (Record, page 555).

Both the Courts of the State of Michigan practically if not explicitly found that said defendants were stockholders of the Pioneer Iron Company, (Record, pages 555 to 559).

If, therefore, the federal question was fairly raised and asserted in behalf of such stockholders, or either of them, this Court has jurisdiction of the case. It is not necessary that such federal question be raised by answer, if the record shows that it was in fact asserted in the State Courts, and was there considered and was ruled upon against them.

Land and Water Co., vs. San Jose Ranch Co.,
189 U. S., 177-180.

The federal question is sufficiently "set up and claimed" if such federal question was fully considered in the opinion of the Court and was ruled upon against the plaintiffs in error. ***Ibid., see Opinion, p. 180, citing numerous decisions of this Court.***

William G. Mather set up this constitutional right by *amendment to the answer filed by The Iron Cliffs Company The Cleveland-Cliffs Iron Company and William G. Mather,* (Record, pages 40, 51, 52), and this right was claimed for himself individually *and as trustee,*— the stock of The Iron Cliffs Company being owned by him in trust, (Record, page 51, 52).

The State Courts understood that this question was raised in behalf of all defendant stockholders, this is plainly evident from their opinions. *The Circuit Court* in its opinion, (Record, pages 554, 555) says: "It is contended in behalf of defendants that in any event the defendants are not entitled to a decree without making the Pioneer Iron Company a party to the suit;" also, on page 555, "They, (complainants), also contend that the Pioneer Iron Company would be bound by the decree without making it a party, — *for the reason that defendant William G. Mather was the President of the company and the holder of a large majority of its stock as trustee for defendant, The Iron Cliffs Company.* Said Court found that it was not necessary to make the Pioneer Iron Company a party defendant, (Record, page 555).

In the Supreme Court the same right was asserted in behalf of all stockholders.

The Court in its opinion says (Record, page 569), "It is also urged as a fatal objection to the maintenance of this bill that the Pioneer Iron Company is not made a party;"

Answering this the Court say, (Record, page 569), "*The defenadnts own* and have owned for many years *all its capital stock*, etc., etc." We do not here purport to embody all the language of the Supreme Court, but sufficient only to indicate that the constitutional right was being claimed on behalf of all defendant stockholders.

Said Supreme Court also determined, (Record, page 569), that "*The Pioneer Iron Company, therefore, was not a necessary* party.

It thus appears that the constitutional right was raised and was understood by both Courts and counsel for defendants in error to be raised.

In both Courts this question was considered, and both decided that the Pioneer Iron Company was not a necessary party to the suit.

The decision of the constitutional question was *necessarily involved* in the decision, and the conclusion that the Pioneer Iron Company was not a necessary party to the suit.

Water Power Co., v. Canal Co., 142 U. S., 254, see opinion 268, where the Court say:

> "This Court has frequently had occasion to hold that it is not always necessary that the federal question should appear affirmatively on the record or in the opinion, if an adjudication of such question were necessarily involved in the disposition of the case by the State Court."

MATHER'S OWNERSHIP OF STOCK.

Nowhere does the record show a finding against Mr. Mather's ownership of this stock; on the contrary the fact of his ownership was assumed, and practically found and determined.

The affirmative proof of his ownership of the stock of the Pioneer Iron Company, abundantly appears in the record.

1. Record, page 52. The answer of Mr. Mather set forth that he owns the same individually and as trustee.

2. Record, page 344. James H. Hoyt testified that in the year 1891 William G. Mather was President of the Pioneer Iron Company. This of course could not have been true unless he was a stockholder. (Record, page 350). Mr. Hoyt further testified that "the stock of the Pioneer Iron Company was held by William G. Mather, — the large portion of it as trustee," for a good many years.

3. Record, pages 517, 518. The exact holding and ownership of the stock of the Pioneer Iron Company in the year 1890 is shown by the amended articles of association of said company taken from the books of the Secretary of State of Michigan. These books show that Mr. Mather owned:

Individually	10 shares
As Trustee	4930 shares

The 4930 shares being equitably the property of defendant, the Iron Cliffs Company, as testified by Mr. Hoyt.

4. Record, pages 531, 534, 537, 539. On April 6, 1901, the record shows that William G. Mather yet owned:

Individually	10 shares
As Trustee	3930 shares

The stock so held as trustee being the property of the Iron Cliffs Company, it having been testified that a thousand shares of the Pioneer Iron Company's stock had been sold during the ten years to Mr. Hale, General Garretson and others who were not parties to the suit.

5. Record, page 555. During the trial and the argu-

ment of the case as hereinbefore stated complainants by their counsel asserted the ownership of this stock by William G. Mather, insisting that *he was President of the* Pioneer Iron Company, which necessarily required an ownership of stock, and further that *he held stock as trustee for the Iron Cliffs Company.*

In addition to the foregoing, and corroborative of the fact that the Courts of Michigan as well as counsel for complainants were satisfied that this federal question had been raised in said suit *by defendants who were stockholders of the Pioneer Iron Company,* is the fact that on December 3, 1903, the judges of the Supreme Court of Michigan after due consideration, allowed the writ of error herein to this Court; which, but for the ownership of said stock and the fact that said federal question had been raised, would not have been done.

There was in fact no attempt at denial or contradiction of the ownership of this stock by William G. Mather for himself and as trustee of The Iron Cliffs Company; and the only indication in the record to the contrary consists either of certain loose statements of witnesses, or disconnected scraps of testimony, not intended in any case to deny the ownership of stock by William G. Mather; and which is only made to appear so, by reason of being *now* pieced together as parts of an ingenious argument by counsel.

While it is true that the books of the Pioneer Iron Company were not brought into Court and thrown open to the inspection of competitors or adversaries, yet the reason for this is perfectly evident when we consider that the Pioneer

Iron Company was not made a party to the suit and that no step which could be taken by the defendants in Court would serve to protect its property or its rights. The only apparrent use to be made of them was to give to other competing corporations a knowledge of its private business.

OTHER CLAIMED NON-FEDERAL QUESTIONS.

The claims found in the brief filed by defendants in error, pages 40 to 50, that the Court decided the case between the parties, complainant and defendant, upon non-federal grounds, are not sustained *as matter of fact.* This will appear by an examination of the judgment which was affirmed, (Record, page 556.)

As matter of law, the claim so asserted begs the entire question: While it is true that as *against the parties to the suit* who had their day in Court, if there was a non-federal controversy sufficient to sustain the decision, — then, even if a federal question was also raised, this Court would assume that the decision was based upon the non-federal question and would not take jurisdiction; — yet, as against the Pioneer Iron Company, *which was not a party to the suit*, no Court could hear and decide *any controversy* or question affecting its rights. It follows that any judgment which, in its absence, destroyed, cut off or interfered with the use of the property of the Pioneer Iron Company, necessarily involved an invasion of its constitutional rights.

The existence of a federal question in this case depends, therefore, upon the practical results of the judgment complained of, and not upon the reasons given for rendering it.

If the practical effect of the decision of the Circuit Court of Marquette County, Michigan, which was affirmed in the Supreme Court, is to determine the rights of the Pioneer Iron Company under said lease, and to find the property of the company therein had been lost by acts or defaults of said company; and if by reason of the perpetual injunction allowed, the practical result is that the officers of the Pioneer Iron Company are, as its representatives, perpetually enjoined from asserting rights under said lease on behalf of said company, — then it follows that the rights of the Pioneer Iron Company have been practically determined by the decision, and *a denial of the constitutional right of the Pioneer Iron Company and its stockholders is necessarily involved therein.*

The question, therefore, for this Court's consideration is, *what was the substance of the thing done,* rather than *the theory* on which it was accomplished.

In answer to the suggestion of defendants in error in their brief, page 46, that William G. Mather might be subject to injunction, if, for his own benefit, outside of the terms of said lease, he was attempting to mine, — we say, that no such state of facts was the basis of this suit. No such considerations were passed upon by the Court and no such conditions could lead to the judgment here complained of, — where, among other things, *all the defendants* were perpetually enjoined not only as individuals, *but in their representative capacity,* from further entering upon the lands for the purpose of exploring for or taking any minerals or iron ore or for any purpose whatever.

A decree so sweeping and so destructive of the rights of the Pioneer Iron Company could not be based upon *per-*

sonal encroachment of William G. Mather as an individual. But even in such a case as that supposed, — if the practical effect was to take the property of the Pioneer Iron Company, the judgment would violate the constitutional rights of said company and its stockholders.

Of like character is the suggestion found on page 47 of defendants' brief,— "*that the Pioneer Iron Company is not in any manner deprived of or affected in its rights by suit or by other means to assert or determine its rights to mine ore under its lease.*"

This claim, we have hereinbefore discussed and answered on pages 24-25 of this brief. The fact, however, that the practical use and value of said lease to the Pioneer Iron Company is directly interfered with and cut off by the judgment complained of, — could not be demonstrated more clearly, than by the evident fact that said company cannot now *enjoy and use its property, without entering upon another litigation.*

We submit therefore, that the motion to dismiss this case for want of jurisdiction should be overruled, — that the judgments of the Courts of the State of Michigan should be reversed and that the case of complainants below should be dismissed.

Respectfully submitted,

Jas. M. Hoyt

HOYT, DUSTIN & KELLEY,

Attorneys for Plaintiffs in Error.

No. 173.

Supreme Court of the United States.

THE IRON-CLIFFS COMPANY, THE CLEVELAND-CLIFFS IRON COMPANY, WILLIAM G. MATHER AND MURRAY M. DUNCAN.

PLAINTIFFS IN ERROR.

vs.

NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG AND MARY KAUFMAN,

DEFENDANTS IN ERROR.

Supplemental and Answering Brief for Plaintiffs in Error.

JAMES H. HOYT,
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DEFENDANTS IN ERROR.

Supplemental and Answering Brief for Plaintiffs in Error.

Certain criticisms and various new propositions and authorities advanced by defendants in error in their reply brief constitute our reason for filing herewith a short answer.

I.

Defendants in error criticize the clause found on page 7 of plaintiff's original brief, where an intended statement of the substance and effect of the answer of William G. Mather, (Record, pages 51 and 52), was by mistake of the printer put in quotation marks as though an exact quotation of the

words of such answer were being made. The statement was not intended by us as a quotation; but *the substance and real meaning of this answer, however, and its manifest intent is correctly stated.*

The record shows that ten shares of *the stock* of the Pioneer Iron Company belonged to William G. Mather personally and stood in his name; and that 3930 shares belonged to the Iron Cliffs Company, — and stood in the name of William G. Mather, *as trustee.* The exact proportions in which this stock was so owned had been proven, and the Court knew the facts.

The contention by the defendants in error that the protection of the federal constitution, and the 14th amendment of the same, was not explicitly invoked and claimed in behalf of the owners of *all the stock* so held by Mr. Mather, both for himself and the Iron Cliffs Company, is not supported either by the facts or the holdings of this Court.

It cannot be important as to *the method adopted to raise and assert this question* in behalf of these two stockholders, who were the only stockholders of the Pioneer Iron Company who were made parties, since the state Courts were explicitly advised that the same was so raised. Again the claim was also asserted for them by counsel in argument and in brief filed in their behalf, which alone would have been sufficient according to the cases cited in our original brief. How could the right be claimed and pleaded and set up more strongly for the Iron Cliffs Company than by the trustee holding in his own name these shares of stock?

> "Although no particular form of words is necessary to be used in order that the federal question may be considered to be invoked within the meaning of the cases on this subject, *there yet must be*

something in the case before the state court which would at least call its attention to the federal question as one that was relied on by the party." etc., etc.

Bridge Co. v. Illinois, 175 U. S., see opinion 634.

The claim made by the defendants, (reply brief, page 4), that the opinions filed do not show that the constitutional question now asserted was considered and passed on by the Michigan Courts, — must be found incorrect when the facts shown by the record are examined, and when such opinions are read in the light of the pleadings. The Circuit Court of Marquette County, after the evidence was closed, expressly permitted the answer to be amended for the very purpose of setting up and claiming this federal question in exact and explicit form (Record, page 52). This pleading could not have been overlooked or disregarded. The argument of counsel for defendants below could not have been ignored. The exact federal question here raised was thus before the state Courts, and, in justice, required consideration and decision. The opinions of both the state Courts contained in unmistakable terms their determination of this question, and they show that the right was claimed for the "*defendants.*"

The decisions of this Court cited (reply brief, page 4) were rendered in cases where it could not be certainly determined what federal questions,if any,were presented,or whether the same were raised in the state Courts and considered there. Such decisions, therefore, have no bearing here, where the constitutional right relied on had been raised in most explicit and technical form.

II.

Corporate existence of Pioneer Iron Company and legality of reorganization not considered by state courts.

The Courts of Michigan did not find or determine that the Pioneer Iron Company "was dead," or had ceased to exist, or that the corporation, as extended by reorganization under the statute, was not a regular live and going concern.

Defendants below asserted that the Pioneer Iron Company, as reorganized under the Michigan law, continued to own the 99 year lease; and they introduced in full the official record of such organization. Complainants raised technical objection to the regularity and also to the legality of the reorganization; but these contentions of complainants were expressly left undecided by the Michigan Courts. The Supreme Court of Michigan say (Record, page 576):

> "Very important questions are raised by counsel as to the effect of this reorganization statute, the validity of the act of reorganization by the Pioneer Iron Company, as to whether the Pioneer Iron Company was in position to avail itself of this statute, and also the effect upon the 99 year lease, should the reorganization he held valid. Inasmuch, however, as these questions are not essential to a decision of the case, we refrain from determining them."

The reorganization and the corporate character of the Pioneer Iron Company was thus intentionally left undisturbed and unaffected with all the rights given and recognized by the State of Michigan. Indeed, the questions at-

tempted to be raised were of a character to be set up only at the instance of the state itself.

We here repeat that there was no dispute as to the acts done and steps taken for the purpose of reorganizing and continuing the existence of the Pioneer Iron Company under the statute and law of Michigan. The contention was confined to *the legal effect* of these acts. There could be no dispute that the State of Michigan permitted and continued to recognize the corporate existence of the Pioneer Iron Company under its reorganization. The authorities therefore cited by defendants in error (reply brief, pages 15 to 17), relative to corporations which had gone out of existence, can have no application or bearing upon the questions here to be considered.

It is claimed, however, that the Supreme Court of Michigan found that the Pioneer Iron Company was used as a "dummy." That Court in its opinion did state that "under the allegations of the bill and as well under the proofs the Pioneer Iron Company *is used* as a dummy for the benefit of the defendant companies." The Supreme Court was careless in its statements as to the ownership of the stock of the Pioneer Iron Company. The stock of the company was not and is not all owned by defendants below. The Record shows, (Page 531) that the following persons, not parties to this suit, — were stockholders:

E. V. Hale,	holding	950 shares.
George A. Garretson,	holding	50 shares
Peter White,	holding	10 shares
E. R. Perkins	holding	10 shares
Fred A. Morse,	holding	10 shares
J. H. Sheadle,	holding	10 shares
James H. Hoyt,	holding	10 shares
J. H. McBride,	holding	10 shares

Most of these stockholders were not connected in interest with the Iron Cliffs Company.

That said Court did not intend by its language above quoted to pass upon the corporate existence or reorganization of the Pioneer Iron Company is evident from the express statement of that Court hereinbefore set forth.

It will be noted that the above language of the Court occurs in a discussion of the claim urged as "*a fatal objection to the maintenance of the bill,*" —that the Pioneer Iron Company was not made a party to the suit, (Record, page 569). The Court was leading to and it reached the conclusion that said corporation might be *bound by the decree* under the doctrine of "representation." We know this from the authorities cited,

15 *Enc. of Pl. & Pr.*, page 627;
Hale v. Hale, 146 Ill., 277.

Upon this exact question this Court has heretofore passed. Even in case a corporation *has suspended all business*, and even though the stockholders are all before the Court, this Court has decided that no judgment could be rendered affecting corporate property rights without the presence in Court of such corporation as a party to the suit.

Land & Cattle Co. v. Frank, 148 U. S. 603, see opinion 610.

If in stating that the Pioneer Iron Company "was *used* as a dummy," — the Court did more than to set forth the claims of complainants, — and if it decided *a fact*, as a basis for the judgment declaring the ninety-nine year lease terminated and lost and for the perpetual injunction complained of, — then such finding was but one of the steps which we complain of as unwarranted and in violation of our con-

stitutional right. The Pioneer Iron Company had the right to be heard on this, as upon all questions which might affect its continued rights under this lease.

The *real claims made* and pressed by complainants below, and in fact decided by the Michigan Courts *were not of a collateral character, simply in criticism* of the acts of the state in incorporating this company, but *they struck directly at the continued existence of the ninety-nine year lease as a property right of the Pioneer Iron Company, and at the privilege which was granted to it to mine thereunder.* The opinions of both Courts as well as the decree clearly show this.

Our claim is, that the lease itself, having been granted for ninety-nine years, it could not be presumed or found, in absence of the Pioneer Iron Company as a party, that such property was intended to last but thirty years. The Pioneer Iron Company as re-organized and thus extended under express law was by statute authorized to retain its property; even under the general decisions, this reorganized corporation *was the successor,* taking the place which the original corporation left, and succeeding to the rights of such original company,

Webster's Dictionary;
Clark & Marshall on Corporations, Secs. 335-341;
Railway Co. v. Miller, 114 U. S., 176, 187;
Railway Co. v. Pendleton, 166 U. S., 669, 673;
Turnpike Co. v. Sanford, 164 U. S. 587, see opinion.

Under this lease which expressly *descended to successors* of the Pioneer Iron Company, the reorganized corporation was certainly invested with apparent property rights which could not be taken in its absence as a party to the suit.

III.

The decree which was affirmed

The decree of the Circuit Court which was by the Supreme Court of Michigan "in all things affirmed." Record, page 577, and which stands as the judgment of the Michigan Courts was carefully and studiously prepared. It was separate and distinct from the opinion of the Circuit Court. This decree begins on Record page 556. It is entitled "Decree." After the formal parts, it begins with the following language: "*And the Court, having duly considered the same, and being "advised in the premises, doth find, order, adjudge and decree "as follows.*"

Said decree thereupon proceeds to find and adjudge the facts governing the rights of the parties, all of which, together with the final paragraph entering perpetual injunction, constitute the judgment complained of in the petition in error here.

It is the foregoing "decree" which was "in all things affirmed." It is the final injunction based upon the "foregoing findings and determinations of the Court," — that conclusively and perpetually terminates the property rights of the Pioneer Iron Company.

The claims found in reply brief, pages 12 and 13, that in perpetually enjoining defendants in their "individual or *representative capacity*" the Court did not refer to them as representatives of the Pioneer Iron Company, but only referred

tc them as representatives of The Cleveland-Cliffs Iron Company and the Iron Cliffs Company, finds no support in the decree itself; for, when it is considered that these defendant companies, The Cleveland-Cliffs Iron Company and the Iron Cliffs Company, together with their counselors, attorneys, solicitors and agents were *themselves* perpetually enjoined, it is plain that no further terms were necessary to bind them. The words "*representative capacity*" could have had meaning and force only when applied to the capacity in which defendants claimed to act in mining upon the lands in question, — namely, as representatives of the Pioneer Iron Company.

When the terms "representative capacity" are considered in connection with the "*foregoing findings and determinations of the Court*" as to the rights of the Pioneer Iron Company in the ninety-nine year lease, and when it is observed that this language is not restricted by context or otherwise, the effect of the same and the purpose of using these words, together with the uses and application which can and will be made of this entire decree need no further illustration or argument.

Respectfully submitted.

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HOYT, DUSTIN & KELLEY,
Of Counsel.

Office Supreme Court U.S.
FILED
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JAMES H. MCKENNEY,
Clerk.

No. 174.

In the Supreme Court of the United States.

THE IRON CLIFFS COMPANY, ET AL.,

PLAINTIFFS IN ERROR,

vs.

NEGAUNEE IRON COMPANY, ET AL.,

DEFENDANTS IN ERROR.

MAIN BRIEF FOR PLAINTIFFS IN ERROR.

JAMES H. HOYT,
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DEFENDANTS IN ERROR.

MAIN BRIEF FOR PLAINTIFFS IN ERROR.

This Court has jurisdiction herein, because of the *federal question* set up and claimed both in the state courts and here, — upon which question the courts of Michigan ruled against the plaintiffs in error.

We claim that by the judgments and decrees of the courts of Michigan the property of plaintiffs in error, William G. Mather and the Iron Cliffs Company, was taken *without due process of law.*

These plaintiffs in error were, before the beginning of this suit, and still are, stockholders of the Pioneer Iron Company;—a large proportion of the value of the stock of which company consisted of its ownership in a certain lease, giving it the right to mine for iron ore for the term of 99 years.

The courts of Michigan, in the absence of the Pioneer

Iron Company as a party to the suit, by their judgment and decree, cut off and terminated this lease and all rights of the Pioneer Iron Company under it. The Pioneer Iron Company, not being a party to the suit, could not be and was not heard in defence of its property and said plaintiffs in error were not represented in defence of their corporate property rights.

Plaintiffs in error by pleading and in argument protested against the rendition of judgment in absence of the Pioneer Iron Company, and set up and claimed their rights under the Fourteenth Amendment of the Federal Constitution that said company should be heard, explicitly advising the state courts of the exact claims now made; but the Michigan courts decided against them on those claims and rights, and rendered the judgment here complained of.

STATEMENT OF FACTS.

The Pioneer Iron Company was the lessee and owner of a lease, under which it had the right, for 99 years to mine for iron ore on large tracts of land in Marquette County, Michigan. No person other than said company and its stockholders was interested in that lease, and no other person claimed any rights therein.

On the 3rd of March, 1900, defendants in error began this suit in the Circuit Court in Marquette County, praying; (1.) That all the rights and privileges granted in the 99 year lease from Harvey to the Pioneer Iron Company be declared terminated; (2.) That said lease be cancelled as a cloud upon complainants' title, and that said title to all the iron ore and marble in and upon said lands be quieted and confirmed in complainants; (3.) That complainants be granted a perpetual injunction, preventing defendants, who were parties to the suit, from setting up in the name of the Pioneer Iron Company, or in any other manner, any right or title un-

der said lease from Charles T. Harvey to the Pioneer Iron Company, and from entering upon said lands or removing therefrom any iron ore, etc.

As the basis for the relief asked, numerous acts and defaults of the Pioneer Iron Company were set out,—all of which were claimed to result in the termination of all the rights of said company under this 99 year lease; and it was also alleged that the defendants, acting in the name of the Pioneer Iron Company, as stockholders, directors and agents of said company, were wrongfully asserting in its name, its existing and continuing right to mine under said lease, and were in the act of mining and removing iron ore from said premises.

Although the rights and property of the Pioneer Iron Company were thus the whole subject of this attack, that company was not made a party to the suit.

The Circuit Court of Marquette County, Michigan, after hearing the entire case,—by its decree proceeded to find and did pass upon the rights of the Pioneer Iron Company under said lease, and found and adjudged that it had forfeited its rights therein and thereunder, and that the same were terminated and had ceased to exist, (Record, pages 556, 557, 558, 559), and said Court as a part of its aforesaid decree, concluded as follows:

> "In consideration of the foregoing findings and determinations of the Court concerning the particular matters set forth in the complainants' bill of complaint, it is ordered, adjudged and decreed;
>
> "That the defendants, their counselors, attorneys, solicitors and agents, and each and every of them, whether acting in their individual or *representative capacity*, immediately vacate and remove from the lands described in the bill of complaint, and that they and each of them be and they hereby are perpetually enjoined from further entering upon the said lands of the complainants for the purpose of explor-

ing for or taking therefrom any minerals or iron ore, or for any purpose whatever without the consent and authority of the complainants. (Record, page 559.)

On appeal, the Supreme Court of the State of Michigan, by its decree, (Record, page 577), "ordered, adjudged and decreed that the decree of the Circuit Court of Marquette County in Chancery be, and the same is hereby, in all things, affirmed."

By the judgments of the courts of Michigan, it is thus apparent that the 99 year lease from Harvey to the Pioneer Iron Company has been terminated; and its officers, whether acting *individually or as representatives of the Pioneer Iron Company,* are perpetually enjoined from asserting the rights of said company under said lease by entering upon the premises or prosecuting the work of mining thereon.

Inasmuch as the entire litigation was in absence of the Pioneer Iron Company as a party to the suit, its property was thereby "taken;" and, since the value of the stock of the company was dependent upon the property, rights and interests owned by said company, — it must follow that the property of the stockholders in said company (plaintiffs in error), was *taken without due process of law.*

THE 99 YEAR LEASE.

Its History.

Early in the year 1857, one Charles T. Harvey, then residing at Marquette, Michigan, originated and undertook the promotion of a corporation known as "The Pioneer Iron Company." He induced a number of eastern capitalists to agree to join him and put money into the enterprise. (Testimony of Harvey, Record, pages, 478-491).

On April 22, 1857, the Pioneer Iron Company was chartered under the Mining and Manufacturing Act of Michi-

gan, with a capital of $125,000, divided into 5,000 shares of the par value of $25.00 each, as alleged in the bill and admitted in the answer. Charles T. Harvey was one of the incorporators, and as shown by Exhibit "B." attached to the bill, owned 1668 shares of stock in said company.

Before and for many years after chartering this company, Harvey was the agent and trustee of the stockholders of this company in Michigan,—none of whom were residents or appeared to have been personally familiar with the business which was being conducted at Marquette. Of this Harvey says: —

> "I negotiated these deeds and contracts in the State of Michigan. I was their agent and trustee in that state, that is, I was their agent trusted by them. I was never their official trustee, of course. They trusted me to do these things for the company. I promoted the company, that is, originated the company; got these gentlemen to take stock and join me in the enterprise." (Record, page 491).

Harvey undertook the task of acquiring land useful for the purposes of this corporation, and in doing this appears to have chosen the method of passing title through himself while acting as the agent and trustee of the corporation.

In the winter of 1857 he negotiated with the Jackson Iron Company to furnish iron ore to the proposed Pioneer furnace,—and on February 26, 1857, he consummated the purchase from James L. Reynolds of 4162 acres of land in Marquette County, which is referred to in the bill of complaint.

That Reynolds was the owner of this land in fee is admitted on the pleadings.

On the day last named, Reynolds and wife, for a valuable consideration, (alleged in the deed to have been $30,000), conveyed said lands by warranty deed in fee simple to Charles T. Harvey of Marquette, "his heirs and assigns forever."

Following the description in this deed are the following

words: "which lands are sold with full warranty, subject, "however to the conditions and agreements of the contract "marked "A," herewith appended, between the parties hereto, "concerning the undiscovered minerals on said lands."

Then follows the habendum clause and clauses of full warranty in usual form.

Contract "A" referred to in this warranty deed from Reynolds to Harvey is as follows:

> "This Memorandum of Agreement made this 26th day of February, by and between James L. Reynolds of Chicago, State of Illinois, of the first part and Charles T. Harvey of Marquette County, State of Michigan, of the second part,
>
> WITNESSETH; That the party of the first part has this day conveyed by "Warrantee" Deed (to which this contract is attached) to the party of the second part certain lands therein described amounting to Four thousand one hundred and sixty-two 46-100 acres, for the consideration of the sum therein named, and also *in the further consideration of reserving* to himself an undivided half interest in and to all the minerals which have been or may be discovered on the premises referred to as conveyed, together with the right of having, or acquiring so much of the surface privileges as may be necessary to mine or develop the same, by paying one-half of the equitable or appraised valuation per acre, for the surface thus used or acquired. PROVIDED not more than twelve dollars per acre shall be adjudged to be the value of the unimproved lands taken for such mining purposes; besides which, however, full compensation shall be paid to the party of the second part, or his assigns, for damages, which may by such mining or occupancy ensue to the business connected with or improvements placed upon such land, by the party of the second part or his assigns. Such payment to be made by the party of the first part on an equitable, agreed value, or upon an appraised valuation made by disinterested "Referees," one designated by each party

(hereto), and they chosing a third, and the decision of the three thus chosen to be final. And when such payment is made, he of the first part shall be entitled to enter upon and occupy any portion of said lands for mining purposes as aforesaid solely.

PROVIDED; And it is agreed, however, that the party of the second part, or his assigns, shall have the sole right, free of cost or compensation to the party of the first part, to mine for their own use or *for manufacturing purposes, within the present limits of Marquette County,*—any mineral ores or marble found on any of the premises herein "referred" to, but shall have no right to sell to other parties for exportation as aforesaid without accounting to the party of the first part for his joint half interest therein.

IN WITNESS WHEREOF the parties hereunto have set their hands and seals the day and year first above written.

CHARLES T. HARVEY, (Seal.)
JAMES L. REYNOLDS. (Seal.)

Conveyance from Harvey to the Pioneer Iron Company.

On April 22, 1857, Harvey conveyed to the Pioneer Iron Company, by warranty deed, 3488 out of the 4162 acres of land, which he bought from Reynolds less than two months before, the consideration named in this deed being $25,000. On the same day that he executed the foregoing deed for 3488 acres, Harvey also executed an agreement to the Pioneer Iron Company, for which the "99 year lease" was afterwards substituted.

Said temporary agreement was as follows (Record, page 408);

This indenture, made this 22nd day of April, in the year 1857, between Charles T. Harvey, of Marquette County, State of Michigan, of the first part, and the Pioneer Iron Company (a corporation exist-

ing by virtue of the laws of the State of Michigan, and doing business in said county and State) of the second part.

WITNESSETH; that the party of the first part for and in consideration of the sum of one dollar, the receipt whereof is hereby acknowledged and confessed, has bargained and conveyed, and by these presents does bargain and convey, certain rights and privileges hereinafter mentioned, with the limitations and provisions thereto annexed, on, in and to the lots or parcels of land known and described as follows, to-wit:—

The southwest quarter of the southeast quarter and the southwest quarter of section No. five (5), the southeast quarter, and all of the east half of the southwest quarter not now already owned in fee by the party of the second part hereto of section No. six (6). The north half of the northeast quarter, and the northeast quarter of the northwest quarter, of section No. seven (7). The northwest quarter of the northwest quarter of section No. eight (8). All in township No. forty-seven (47) north of range No. twenty-six (26) west, containing five hundred and eighty (580) acres in the same. Also the west half of the southwest quarter of section No. thirty-one (31) (fractional) in township No. forty-eight (48) north of range No. twenty-six (26) west, containing sixty-six 29-100 (66 29-100) acres in the same.

All said lands being situated in the county of Marquette and State of Michigan, amounting as above described in all to six hundred and forty-six 29-100 (646 29-100) acres.

The aforesaid rights and privileges on, in and to said lands being:

First. The right to cut and remove all the timber and wood standing or otherwise thereon, for purpose of converting the same into charcoal for manufacturing purposes or such other uses as may be desirable to the party of the second part. Such

wood and timber to be used and removed within five years from date, when within that period it shall suit the convenience of the party of the second part thus to do. Provided, however, that after clearing its own land in fee, on section six, T. 47, R. 26, it shall next remove the timber from the balance of land in that section herein described until it is all removed. Then it shall remove that on section seven (7) herein mentioned. Then that on section eight (8) in like manner. Then next in succession that on section five (5) after clearing its own land on the same, and lastly those in section thirty-one (31), in township 48 of range 26 west. This stipulation, however, at all times to be subject to future agreements between the parties hereto. Provided further, that as far as may be consistent with the interest of said company, it being the judge in these respects, the land when the timber is removed shall be left in favorable condition for improvements, particularly with a view to the erection of other furnaces thereon.

Second. The party of the second part shall have *in perpetuity* the right, free of charge (except for land damages hereinafter mentioned), to mine, obtain and use, any ores or marbles found on said lands, or on any other lands now owned by the party of the first part in either of the townships above mentioned, provided it shall not mine or obtain any ores on said lands except what *it shall actually convert into merchantable iron in its own establishment.* It shall also be at its own expense for mining, and shall not use or injure the improvements placed upon the lands by others without paying just and equitable damages therefor.

Neither shall it be entitled to take any more land to occupy than is clearly necessary to open the mine for iron ore or marble to be obtained readily therefrom, and shall pay $12 per acre for unimproved lands which it may require.

These privileges shall only descend to the party

of the second part's successors in corporate succession.

The party of the first part agrees not to in any wise convey the lands mentioned except with a reservation of these rights and privileges to the party of the second part.

These rights and privileges are made subject, however, to the terms of the prior deed of James L. Reynolds and wife to the party of the first part by which he acquired title to the lands mentioned, which reservations were known prior to the executing of this indenture.

In witness whereof, the party of the first part has hereto set his hand and seal the day and year first above written.

CHARLES T. HARVEY, (Seal.)

Sealed and delivered in presence of
W. H. PEARSE,
G. L. FORD.

This instrument was put in evidence. (Record, page 408). The fact, that it was delivered to the Pioneer Iron Company, that it was never recorded and that *the* 99 *year lease*, executed by Harvey to the Pioneer Iron Company on September 17, 1857, was by the agreement of the parties, substituted for it,—would show that the 99 year lease was a part of the same transaction between Harvey and the Pioneer Iron Company,—which is evidenced by his deed to it. last referred to. The identity of these transactions is conclusively proven by the testimony of Charles T. Harvey. (Record, pages 492, 493).

Harvey testified that this unrecorded lease made on the same day as the deed, was a memorandum given at the time as the evidence that at the proper time an instrument of that nature should be given, but that it was considered as a safeguard against anything happening to him in the meantime, — simply as a protection to the Pioneer Iron Company, — a

memorandum to be entirely superseded by the conveyance to be given later, *i. e.*, the "99 year lease" of September 17, 1857. (Testimony of Harvey, Record page 493).

The Pioneer Iron Company gave direct to Reynolds its obligation for $25,000 of the amount of the consideration named in the conveyance, securing the same by a mortgage, and afterwards paying it in full.

The 99 Year Lease.

On September 17th, 1857, Harvey executed to the Pioneer Iron Company the lease, of which the agreement of April 22, 1857 just mentioned, was the temporary substitute. (Record, page 18, 493). This lease is the "99 YEAR LEASE, which is the subject matter of this entire litigation. It was duly acknowledged and recorded on September 18, 1857. The consideration of this lease, while apparently but one dollar, was really $25,000, paid by the Pioneer Iron Company to Reynolds. Harvey by this 99 year lease "conveyed, assigned and set over" to the Pioneer Iron Company, "certain rights and easements" therein described, "(subject to the provisions and limitations thereto annexed)," in and upon certain pieces and parcels of land in Marquette County, a little over 648 acres in all, which land comprised the remaining part of the land which Harvey had acquired from Reynolds by the deed of February 26, 1857.

Inasmuch as the first clause of the granting part of the 99 year lease relates to the cutting and removing of timber on the land demised, which timber has long since been cut off, it is unnecessary to state here more than the second clause of the granting part of said lease, which relates to the minerals and marble on the land and which is as follows:

> "The party of the first part does hereby let, lease and demise to the party of the second part for the consideration hereinbefore mentioned, *and for the*

full end and term of 99 years from and after the date hereof, all the lands hereinbefore mentioned and all other lands now owned by party of the first part, in either of the townships above mentioned, for the sole purpose of mining and quarrying, at its own expense, such ore and marble as may be found thereon and subject to the provisions hereinafter mentioned, viz:

PROVIDED; It shall not quarry, mine or remove any ores on said lands, except such as *it shall actually convert into merchantable iron in its own furnaces or forges,* and provided further, it shall not in such mining or quarrying operations use or injure any of the improvements which may be placed upon said lands by other persons without paying just and equitable damages therefor; nor shall it occupy in such operations more land than is absolutely necessary to open and work successfully such mines of iron or marble as may be discovered. And it shall purchase and pay at the rate of $12 per acre for unimproved lands which it may require for such purposes. *The rights and easements above mentioned shall descend to the corporate successors of the party of the second part, but not to its assigns.* The party of the first part hereby agrees and binds himself in nowise to convey or encumber any of the lands hereinbefore mentioned except with a reservation of all rights and easements, hereby secured and intended to be secured to the party of the second part. All the above rights and easements are subject, however, to the terms of a certain deed and agreement accompanying the same, executed by James L. Reynolds and wife to the party of the first part on the twenty-sixth day of February, A. D., 1857, and recorded in Register's Office of said county in Liber B of Deeds, on page 381 and 382, to which record for further particulars reference is hereby made."

This 99 year lease was executed by Harvey, as grantor, and accepted by Harvey for the Pioneer Iron Company, grantee. (Testimony of Harvey, Record, page 493).

Although dated September 17th, it was part of the same transaction as the deed of April 22nd, with which it is to be regarded as contemporaneous. (Record, page 493).

It is also worthy of remark that the testimony shows that the tract of 3488 acres which *was deeded* by Harvey to the Pioneer Iron Company for five-sixths of the entire money consideration agreed to be paid by him to Reynolds, was not valuable for minerals; while it appears that the 674 acres which Harvey *did not convey* but leased to the Pioneer Iron Company, are valuable, as they contain substantially all the minerals subsequently discovered. (See testimony of Redfern, Record, page 115). This is very significant in view of the fact that Harvey (Record. page 491) was admittedly the agent of the Pioneer Iron Company in the entire transaction, and selling to that company all the valueless lands deeded to him by Reynolds for $25,000; he retained in himself individually the title to the valuable lands, giving to his *cestui que trust* only such rights in the ore thereon as were conferred by the 99 year lease. These admitted facts give neither Harvey nor his grantees good standing in a court of equity, as against the *cestui que trust*, with whom he made this unconscionable bargain.

In 1865 Harvey sold his stock in the Pioneer Iron Company to Samuel J. Tilden, and severed his connection with that company. (Record, page 492).

It appears from the record that the Pioneer Iron Company, having acquired the property above referred to from Harvey, and having erected a furnace in Marquette County, also acquired other properties and rights for use in its business. It is also undisputed on the evidence that the Pioneer Iron Company entered upon its estate, cut timber and mined for iron ore and that it carried on operations to a greater or

less extent from its organization until now, and is still actively engaged in the manufacture of pig iron within the limits of Marquette County as they existed at the time Reynolds gave his deed.

The Pioneer Iron Company.

As hereinbefore stated the Pioneer Iron Company was organized and a charter obtained by Harvey and his associates on April 22, 1857. (Record, pages 1 to 16). Its corporate powers being then by constitutional provisions, limited to the period of thirty years, to-wit, until April 22, 1887.

Provision was and is made by the law of Michigan as follows:—

> (8534) *Sec.* 8. "All corporations, whose charters shall expire by their own limitation, or shall be annulled by forfeiture or otherwise, shall, nevertheless, continue to be bodies corporate for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock; but not for the purpose of continuing the business for which such corporations have been or may be established."

Subsequently, before the extension of the Pioneer Iron Company by its reorganization, the constitution of Michigan was amended as follows:

> "*Art.* 15. *Sec.* 10. No corporation, except for municipal purposes, or for the construction of railroads, plank roads and canals, shall be created for a longer time than thirty years; but the legislature may provide by general laws, applicable to any corporations, for one or more extensions of the term of such corporations while such term is running, not exceeding thirty years for each extension, on the consent of not less than a two-thirds majority of the capital of

the corporation; and by like general laws for the corporate reorganization for a further period not exceeding thirty years, of such corporations whose terms have expired by limitation, on the consent of not less than four-fifths of the capital. Provided, that in cases of corporations where there is no capital stock, the legislature may provide the manner in which such corporations may be reorganized."

Thereupon, pursuant to this constitutional provision, before the reorganization of said company, the legislature of the State of Michigan duly enacted a statute of said state, providing as follows:

"(7035) *Section* 1. *The People of the State of Michigan, enact;* That it shall be lawful for any corporation heretofore or hereafter organized under the general laws of this state for mining, smelting or manufacturing purposes, whose corporate term has expired, or shall expire by limitation, at a special meeting of its stockholders called for that purpose, by a vote of at least four-fifths of its capital stock, to direct the continuance of its corporate existence for such further term, not exceding thirty years from the expiration of its former term, as may be expressed in a resolution for that purpose. Such meeting may be called in accordance with the by-laws of the corporation and the laws of this state applicable to the same class of corporations whose term has not expired by order of the directors *de facto* of the corporation. Upon the adoption of such resolution by a vote in person, or by proxy duly filed, of a majority of at least four-fifths of the capital stock, it shall be the duty of the president and secretary of stockholders' meeting to make, sign and acknowledge duplicate articles of association, as in the case of a new corporation, to which shall be appended a copy of the proceedings of such stockholders' meeting certified by the secretary and verified by his oath, which articles of association shall be filed with the

Secretary of State and with the County Clerk of the County where the corporation carries on its business, and be by both recorded in their respective offices, at the expense of said corporation; and the copies so filed, the record thereof, or a certified copy of either of such records shall be *prima facie* evidence of the facts therein recited; but said articles of association need not set forth in the case of corporations existing under the provisions of chapter one hundred and twenty-three of Howell's Annotated Statutes, the cash value of property conveyed to the corporation contemporaneously with its re-organization, nor the names of the directors for the first year; Provided, nevertheless, that this act shall not be applicable to any corporation whose term may expire after this act takes effect, unless its meeting be held within two years after such expiration; nor to any corporation whose business has been or may be wound up and property sold pursuant to the voluntary action of the stockholders or of any Court of competent jurisdiction; Provided, that no corporations, except corporations organized to carry on business in the counties of Houghton, Keweenaw and Ontonagon, shall be permitted to reorganize hereunder which for the past ten years have ceased to carry on the business for which they were organized.

(7036) *Sec.* 2. The renewed term of such corporation shall begin from the expiration of the former term thereof, and the corporation thus renewed shall hold and own all the property held and owned by the corporation before renewal, and shall be liable to all its debts, liabilities and obligations as fully as if the former corporate term had not expired; and the directors and officers who were such in fact at the time of the meeting, shall hold and continue in their offices until their successors shall be elected and shall qualify; Provided, nevertheless, that if the call for the meeting to extend the corporate term shall embrace a notice that a number of the directors will be elected at such meeting, such election may be

then held accordingly, and the directors then elected shall, when they shall qualify, become and be the directors of such renewed corporation."

Under this law the Pioneer Iron Company took the necessary steps and proceedings and duly reorganized said corporation, thereby extending its charter for another period of 30 years from April 22, 1887.

Certified copies of the records of the Secretary of the State of Michigan were introduced in evidence. (Record, pages 295-303, also pages 517-545).

To be sure it is claimed by defendants in error that there were defects in the first reorganization; but such defects, if they existed, were all cured by amendment to the articles of incorporation of the reorganized company and by subsequent action of its stockholders and directors. And even if this were not so, the fact of the existence of such errors, if any there were, could not affect the grant covered by the 99 year lease,—which would not lapse,—but under the terms of the lease *would descend* to any company organized as *the corporate successor* of the Pioneer Iron Company,—or until such company was organized, or the Pioneer Iron Company was effectively reorganized, — would remain in the directors of the Pioneer Iron Company.

The State of Michigan never thereafter questioned the legality or validity of such reorganization, or the continued corporate powers or existence of said company or its right to continue in its transaction of business. It was shown beyond dispute that the Pioneer Iron Company continued in active and extensive business, not only before, but after the year 1889, and up to the present time, not only in the ownership, management, conveyance and control of its landed property, but in the active operation of furnaces within the then limits of Marquette County which are owned and operated by it. (Record pages, 102, 369, 375, 382, 384, 385, 386, 387, 392, 400, 404).

Record, page 369. It is shown that the Pioneer Iron Company was executing options and mining leases.

Record, page 375. Is an important contract between the Pioneer Iron Company and the Arctic Iron Company, dated September, 1889.

Record, pages 382-384. Is a list, about one hundred and forty, deeds and conveyances, extending from the year 1873 continuously down through the year 1896.

Record, pages 386, 387. Is the deed of conveyance of a furnace at Marquette, from the Carp River Furnace Company to the Pioneer Iron Company, dated January 3, 1900.

Record, page 400. Shows a deed executed by the Arctic Company to the Pioneer Iron Company, dated September 14, 1889.

Record, page 404. Shows the proceedings and expenses in a tax case, in which, in the year 1899, the Pioneer Iron Company was interested together with complainant Edward N. Breitung.

On *Record, page* 102 is a copy of the two notices given by complainants in this suit, directed to the Pioneer Iron Company, — all conclusively showing the recognized and actual corporate existence of the company as a going concern under the laws of Michigan.

By the terms of the 99 year lease it was provided that:

> "The rights and easements above mentioned *shall descend to the corporate successors* of the party of the second part, but not to its assigns," (Record page 20.)

The Pioneer Iron Company, as so recognized and extended, continued to assert its right in said lease, — *it being the sole and only party interested therein, and more than fifty years of said term having yet to run when this suit was brought.*

ASSIGNMENT OF ERRORS.

Plaintiffs in error claim that the Supreme Court of the State of Michigan erred in the following particulars, to-wit:

First.

Said Supreme Court of the State of Michigan erred in sustaining and affirming the decree and judgment of the Circuit Court for the County of Marquette, Michigan, wherein and whereby said Circuit Court found, determined, adjudged and ordered that the 99 year lease executed by Charles T. Harvey to the Pioneer Iron Company had been and was terminated and destroyed, and that defendants below, and each of them, whether acting in their individual or representative capacities, immediately vacate and remove from the lands in question (covered by said 99 year lease); and perpetually enjoining said defendants and each of them from further entering upon said lands for the purpose of exploring for or taking therefrom any minerals or iron ore for any purpose whatever, — for the reason that said Pioneer Iron Company had not been made or become a party to said suit and was not heard in defense of its property or rights. The property of said Pioneer Iron Company and of its stockholders was thereby TAKEN WITHOUT DUE PROCESS OF LAW.

Second.

Said Supreme Court of Michigan erred in finding, adjudging and decreeing,—and, by the affirmance of said judgment and decree of the Circuit Court of Marquette County,— in holding that said 99 year lease so executed to the Pioneer Iron Company by Charles T. Harvey was terminated, — said Pioneer Iron Company not having been made a party to said

action, or having an opportunity to be heard in defence of its rights to said property, — BY REASON OF WHICH THE PROPERTY OF THE PIONEER IRON COMPANY AND OF ITS STOCKHOLDERS, PLAINTIFFS IN ERROR, WAS TAKEN WITHOUT DUE PROCESS OF LAW.

Third.

Said Supreme Court of Michigan erred in determining and deciding that the Circuit Court of Marquette County, Michigan, and said Supreme Court of Michigan could by their respective judgments terminate the 99 year lease executed by Charles T. Harvey to the Pioneer Iron Company and could cancel the same as a cloud upon the title of complainants in said suit, and that it had jurisdiction to adjudge the same to have been destroyed and terminated, — without the presence of the Pioneer Iron Company as a party to said suit.

Fourth.

The action of said Supreme Court of Michigan, *in affirming in all things the judgment and decree of the Circuit Court of Marquette County, Michigan,* and thereby adjudging and decreeing the 99 year lease so executed by Charles T. Harvey to the Pioneer Iron Company, and the rights of said company therein and thereunder, to be cancelled and terminated; ordering that defendants below, officers and stockholders of said corporation in their individual *and their representative capacities,* vacate the property in question and perpetually enjoining said defendants below as aforesaid from entering upon said lands for the purpose of exploring for or taking therefrom any minerals, or iron ore, or for any purpose whatever; and further thereby finding and adjudging that the corporate term of existence of said Pioneer Iron Company expired April 22, 1887, — said Pioneer Iron Company not being a party to said

suit, — IS REPUGNANT TO AND IN CONFLICT WITH ARTICLE 14, SECTION 1 OF THE CONSTITUTION OF THE UNITED STATES, which declares: "That no State shall make or enforce laws which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any citizen of life, liberty or property without due process of law" — in that such decree and adjudication cuts off, destroys and extinguishes large property rights and interests of said Pioneer Iron Company, and through it the value of the capital stock of said company held by plaintiffs in error, and thereby cuts off and destroys the franchises, rights and interests of said company, granted to it by the State of Michigan, whereby the interests and property rights of its stockholders are diminished and destroyed, — ALL WITHOUT DUE PROCESS OF LAW.

THE ARGUMENT.

The relation of the stockholders of a corporation to the corporate property is such that if by judgment of the courts of Michigan the property of the Pioneer Iron Company was cut off, destroyed or diminished in value, it must follow of necessity that the value of the stock of that company was thereby diminished and taken away.

The value of the stock in a corporation is dependent absolutely upon the extent, value and incomes of its property; —the corporate property after payment of debts being in equity held and owned in trust for the stockholders.

> "Though the title to the property of the corporation is in the corporation and not in the stockholders, the stockholders are undoubtedly interested therein; though the title is in the corporation, the beneficial interest is in the stockholders in proportion to their shares."

"For the same reason a stockholder is interested in an action by or against the corporation, although not technically a party thereto, etc., etc."

1 *Clark & Marshall on Corporations*, Sec. 7, p. 23.

If, therefore, by the judgment complained of, the 99 year lease, the property of the Pioneer Iron Company, was set aside and thus destroyed and terminated, the value of the shares of stock in that company was diminished and taken away by the same judgment, exactly to the extent of the value of the lease.

That the effect upon the stockholders was indirect, does not at all vary the principle. Their property is none the less "taken," if its value is impaired.

Railway Co. v. Minnesota, 131 U. S., 458;
Gas Lt. & Coke Co. v. Cleveland, 71 Fed. R., 614.

Even though the stockholders were themselves made parties to the suit as individuals, yet they had no power as such to appear for and represent the corporation; and could not, therefore, defend their corporate property.

Brunson v. Railway Co., 2 Wall., 301, 302, 303;
Ex parte Cutting, 94 U. S., 92;
Shoe & Leather Co. v. Kurtz, 34, Mich., 88;
Talbot v. Scripps, 31 Mich., 268;
1 *Thompson on Corporations*, Secs. 1071, 1080;
6 *Thompson on Corporations*, Sec. 7570, 7579.

In *Land & Cattle Co. v. Frank*, 148 U. S., 603 (see opinion, 610), this Court held that in all litigation, the result

of which must affect the property and rights of a corporation, such corporation itself, though it has ceased to do business, is an indispensable party. The Court in that case, in its opinion, page 610, say:

> 'The stockholder defendants who have been served with process and entered their appearance do not undertake to represent and cannot in any way represent the corporation against whom the claim for damages is asserted."

It therefore follows that if the property of the Pioneer Iron Company, in its absence, was wrongfully taken *without due process of law* as against the corporation, the property of the stockholders who are here plaintiffs in error was also taken *without due process of law.* Even though they as individuals were parties to the suit in which their stock in the corporation was "taken" or injuriously affected, — yet "due process of law" was lacking, if legal defence of their property was impossible; or, which is the same thing, if no opportunity to make the defence was legally accorded the corporation itself. For the purposes of *representation* and *defence* of the corporation they were as powerless as though not parties.

Where the corporation or its property are the subject of attack in court, the stockholders have the constitutional right to be represented and to defend in such suit through the corporation itself by its officers and directors.

Minnesota v. Northern Securities Co., 184 U. S., 199, see opinion 245, 246.

Therefore, the constitutional rights of the plaintiffs in error, and the question whether the same have been violated by the judgment complained of, will be completely determined

by a determination of the rights of the corporation and the effect of this judgment upon the property of said corporation.

The question here presented then is this: WAS THE PROPERTY OF THE PIONEER IRON COMPANY, BY THE JUDGMENT COMPLAINED OF, "TAKEN WITHOUT DUE PROCESS OF LAW"? COULD THE RIGHTS OF THE PIONEER IRON COMPANY IN THE 99 YEAR LEASE BE LITIGATED AND DECIDED IN A SUIT TO WHICH IT WAS NOT A PARTY, WITHOUT VIOLATING THE CONSTITUTIONAL GUARANTY? COULD THE COURTS OF MICHIGAN, IN SUCH A SUIT, AND IN THE ABSENCE OF THE PIONEER IRON COMPANY, LEGALLY PROCEED TO FIND AND ADJUDGE THAT THE LEASEHOLD RIGHTS OF THAT COMPANY HAD TERMINATED, AND PERPETUALLY ENJOIN ITS STOCKHOLDERS, OFFICERS AND AGENTS FROM GOING UPON THE PROPERTY FOR THE PURPOSE OF OPERATING UNDER SUCH LEASE?

The bill of complaint filed in the state courts admits that the 99 year lease *was granted to the Pioneer Iron Company, and to it only.* If that lease is now owned by any person, that owner is the Pioneer Iron Company. The lease itself has 50 years to run, and by its terms it was made to *descend to the corporate successors of the Pioneer Iron Company.*

The record shows, that the Pioneer Iron Company was reorganized under the laws hereinbefore set forth; that its corporate powers were extended; that it has been actively engaged in business and has ever since been and to this present time is recognized by the State of Michigan.

The Law of Michigan provides that the corporation as reorganized shall continue to hold and own the corporate property; hence, the Pioneer Iron Company as extended and reorganized and as now existing,—is either the original corporation with its corporate existence extended, or it is the successor to the original corporation; and in either case it holds and owns the 99 year lease. (*Webster's Dictionary; Clark & Marshall on Corporations,* Secs. 335, 341, defining the term "successor.")

Under these facts, the question is: Could this valuable existing leasehold, which was granted to and owned solely by this corporation, be by judicial act terminated and cut off in a suit to which said company was not made a party, — without a direct and palpable violation of the constitutional provisions protecting it and its stockholders?

It is no answer to the proposition above made, that the Pioneer Iron Company at the end of other litigation might not be held bound by the decree in a suit to which it was not a party, for in this case it is manifest that it was impossible to frame a decree *determining the rights of the parties before the court without necessarily determining and affecting the rights and interests of the Pioneer Iron Company.* The granting of any of the remedies prayed for, presupposed the termination of the 99 year lease and the property rights of the Pioneer Iron Company therein, or at least, such an interference as to impair and destroy the value and the use of the leasehold.

To hold and adjudge the lease forfeited or inoperative because of past acts of the Company, or because it should be found to be appurtenant to a furnace since abandoned,—or because of the determination, for any reason, that such lease did not continue and remain the property of the Pioneer Iron Company as reorganized, or to grant the injunction prayed for,—would, in case such judgment be given force, necessarily destroy the value of this leasehold and cut off the uses of the

same by the Pioneer Iron Company. *Such was the judgment asked.*

What was in fact the course and result of *the litigation as actually carried forward?*

Complainants below alleged in their bill that said lease was in fact granted to the Pioneer Iron Company; that by reason of acts and defaults of that company said lease was terminated, — but that defendants were wrongfully asserting and exercising rights in the premises, claiming to act under said lease for said company.

All the defendants below by their answers and subsequent proof disclaimed that in asserting the right to mine upon said premises under the 99 year lease, they were acting personally, or that they acted otherwise than as officers and agents of the Pioneer Iron Company; and they disclaimed all interest in said leasehold except on behalf of said company.

The question, therefore, as to whether defendants might mine iron ore upon the property, depended on whether the Pioneer Iron Company, as reorganized and extended, still owned the 99 year lease, and still had the right to mine under its terms. If the lease were valid and in force so that the Pioneer Iron Company had under it the right to mine, defendants, officers of said company, could not be trespassers in asserting its right to mine. Only by finding this lease to have terminated, — only by extinguishing the rights of the Pioneer Iron Company therein and thereunder, could the injunction prayed for be granted against the officers and agents of said company.

Upon this issue the case was actually heard; and the record discloses that the evidence offered by complainants below was all directed to an attack upon the rights of the Pioneer Iron Company under said lease.

THE CIRCUIT COURT OF MARQUETTE COUNTY TREATED THIS AS THE ISSUE BEING TRIED, — and the decree, (which

was subsequently affirmed in the Supreme Court), was based upon findings and determinations of the rights of the Pioneer Iron Company under said lease; and it is concluded with a perpetual injunction restraining the defendants and each of them, whether acting in their *individual or in their representative capacity,* from entering upon the lands covered by the lease for the purpose of exploring or taking therefrom any mineral or iron ore, or for any purpose whatever, without the consent of complainants.

The rights and interests of the Pioneer Iron Company in said leasehold were thereby completely found and adjudicated; and the stockholders, officers and agents who might represent it in asserting those rights were, by order of the court, perpetually enjoined from so doing. Even though technically the Pioneer Iron Company might go into other litigations with the hope of setting aside the judgment so rendered, and establishing its leasehold rights, yet its officers and agents are in the meantime, by the decree complained of, stopped from mining and obtaining iron ore; and while complainants below are carrying forward their mining operations and depleting the ore from the property, years of this valuable leasehold are practically, *by said decree and injunction, cut off from the term of the lease.* It is therefore apparent that even should the Company seek to regain its rights by litigation, its business connected with its mines is in the meantime effectually stopped and the term of the lease is by the decree and injunction complained of, actually shortened and its value diminished, and this regardless of the ultimate result of any such other litigation.

Even assuming that the company may attempt to regain its rights by another suit, — yet under the holdings of the Supreme Court of Michigan, affirming the decision of the Circuit Court, and the conclusions of fact and law already announced in this case,that company would meet the practical

proposition that its rights had been already adjudicated and determined.

It is perfectly clear that as the result of the decision complained of the property of the Pioneer Iron Company has been swept away, in a suit to which it was not a party.

THE LAW.

It is the settled law, firmly established by a long line of the decisions of this Court and of other Courts of the United States that:

(1) A court can make no decree affecting the rights of an absent person, and can make no decree between the parties before it, which so far involves or depends upon the rights of an absent person that complete and final justice cannot be done between the parties to the suit, without affecting those rights.

Shields v Barrow, 17 Howard, 130, 141;
Mallow v. Hinde, 12 Wheaton, 198;
California v. Southern Pacific Co., 157 U. S., 229-248, 251;
Minnesota v. Northern Securities Co., 148 U. S. 199-237;
Water Co. v. Babcock, 76 Fed. Rep., 243, 248, 249, 252.

(2.) Where the rights of a party before the court depend upon the rights of a party not before the court, an adjudication between parties to a suit which involves or affects and thereby determines the property rights of such persons who are not before the court, violates the constitutional provision, preventing the taking of property without due process of law.

Taylor & Co., v. Southern Pacific Co., 122 Fed. Rep., 147, 152;
Water Works v. New Orleans, 164 U. S., 480;
Pennoyer v. New, 95 U. S., 714, 733;
Windsor v. McVeigh, 93 U. S., 264-277.

In the case of *Mallow v. Hinde*, 12 Wheaton 193, (see opinion 198), one Campbell had by will devised his land warrants and military rights to Taylor in trust for the children of Sarah Beard. It was alleged that Taylor, the trustee, while holding the legal title to the property devised, permitted the Beard children to take the management of such property themselves, and that said children entered into executory contracts with Mallow and others for the sale of said lands.

Mallow and others who claimed to have rights under said contracts with the Beard children began this action against one Hinde, who claimed the same land as purchased from Taylor, the trustee. The complainants asked that their equities and contract rights in said land be established by decree and that Hinde be perpetually enjoined from enforcing certain judgments of eviction which had theretofore been obtained against complainants. The children of Sarah Beard were not made parties to the action.

Objection was made that the proper parties were not before the Court; that since complainants could claim title to the land only under the executory contracts with the Beards and be means of a decree enforcing said contracts, it was evident that the Beards should be in court as parties and should be heard before any decree could be rendered.

This Court in answer to the contention in behalf of complainants that a decree could be entered *between the parties to the suit* regardless of the Beards, said:—

> "This doctrine was applied to the case where a small interest was outstanding in one not before the court as tenant in common; each of their rights stood upon its own independent basis; and the ground upon which it was necessary according to the general principle to have both before the court, was to avoid a multiplicity of suits and to have the whole matter settled at once.
>
> In this case the complainants have no rights separable from and independent of the rights of per-

sons not made parties. The *rights of those not before the Court lie at the very foundation of the claim of right by plaintiffs and a final decision cannot be made between the parties litigant without directly affecting and prejudicing the rights of others not made parties.*

We do not put this case upon the ground of jurisdiction, but upon a much broader ground which must equally apply to all Courts of equity whatever may be their structure as to jurisdiction; *We put it on the ground that no Court can adjudicate directly upon a person's rights without the party being either actually or constructively before the Court."*

The Court thereupon remanded the case to the Circuit Court with directions to dismiss the bill.

In the case now at bar, it has been shown that the right to any remedy against the defendants, depended entirely upon a determination of the rights of the Pioneer Iron Company in the 99 year lease. The rights of that company, (which was not before the Court or a party to the suit) " were at the very foundation of the claim of right by the plaintiffs, and a final decision could not be made between the parties without directly affecting and prejudicing" the rights of the Pioneer Iron Company.

In the case of *Shields v. Barrow*, 17 Howard, 130, (see 141). Barrow had entered into a certain contract of compromise with Shields and numerous other persons. Barrow brought suit against Shields, and a part, but not all, of the parties to the contract in question, and asked that said contract be rescinded and annulled and for other relief.

Objection was made on the ground that indispensable parties were not before the Court, and it was claimed that the contract being entire, no decree of rescission could be entered in absence of any of the parties who executed it.

In the consideration of the case the Court discussed and pointed out the principles applicable to the various classes of parties to a suit in equity, calling attention to those "persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience." These persons the Court declared to be indispensable parties. After quoting with approval the language used in *Mallow v. Hinde*, above set out, the Court say, on page 141:—

> "It remains true, notwithstanding the Act of Congress and of the 47th Rule, that a Circuit Court can make no decree affecting the rights of an absent person, and can make no decree between the parties before it, which so far involves or depends upon the rights of an absent person that complete and final justice cannot be done between the parties to the suit without affecting those rights."

The Court thereupon reversed the case and remanded the same with direction to dismiss the original and the cross bill.

The case of *Minnesota v. Northern Securities Company*, 184 U. S., 199 (see 245-6), in a case directly in point.

The owners of a majority of the stock of the Great Northern Railway Company and of the Northern Pacific Company had organized a separate corporation known as "The Northern Securities Company," to which a majority of the stock of the Great Northern Railway Company and of the Northern Pacific Railway Company had been transferred, in claimed violation of the law of Minnesota.

Suit was brought by the State of Minnesota against the Northern Securities Company, as defendant, to prevent by in-

junction the holding and voting of said stock, and the entire plan of said claimed illegal consolidation.

Neither the Great Northern Railway Company nor the Northern Pacific Railway Company were made parties to the suit. This Court in holding that said absent corporations were indispensable parties, without whose presence the controversy could not be determined, reviewed the decisions herein cited, and used the following language, beginning on page 245:—

> "But it is not alleged that the stockholders of the Northern Securities Company constituted or are composed *of all the stockholders* of the two railroad companies, and in fact the contrary is conceded in the allegations of the bill that a majority only of the stock of one or perhaps both of the two railroad companies is owned or at least controlled and managed by the Northern Securities Company."
>
> "It is obvious, therefore, that the rights of the minority stockholders of the two railroad companies are not represented by the Northern Securities Company. They have the right to be represented in the controversy by the companies whose stock they hold and their rights ought not to be affected without a hearing even if it were conceded that a majority of the stock in such companies held by a few persons had assisted in forming some sort of illegal arrangement,"

also the following:—

> "Not only have the stockholders, be they few or many, a right to be heard through the officers and directors whom they have legally chosen to represent them, but the general interests of the public, which might be deeply affected by the decree of the Court, are entitled to be heard; and that, when the State is the complainant, and in a case like the present, can only be effected by the presence of the railroad companies as parties defendant."

The case of *California v. Southern Pacific Co.*, 157 U. S., 229, (see opinion 248 and 255), was instituted on behalf

of the state to obtain an adjudication of the rights of the state in a certain water front in and connected with the town of Oakland. The grants of said water front had been made by the state to the City of Oakland, and from Oakland to various other parties. Neither the City of Oakland nor certain of the other grantees were made parties to the suit.

The prayer of the bill was, among other things, "for a decree adjudging that the state could not make such a grant to the town; that the Town of Oakland had no authority to grant or convey all its water front or any part thereof, and that any control conferred on the town by the Act of 1852 was annulled by the Act of 1854."

Objection was made that various parties whose rights would be affected by such a decree were not before the Court as parties. It was thereupon claimed for the state that the decree could be made and relief granted, but it would be confined to the property owners who were before the Court and that "*the decree would not bind those claiming interests in other parts of the water front.*"

It will be observed that the foregoing contention is identical with that made relative to the Pioneer Iron Company and its stockholders as to the effect of the judgment of the Courts of Michigan,—it being the claim of defendants in error here that even though the judgment purports to sweep away and terminate the 99 year lease, it should not be held to affect the rights of the Pioneer Iron Company,—said company not being a party to the suit.

This Court, (in *California v. Southern Pacific Railway Company., supra*), in passing upon the contentions of the state, reviewed, (pp. 248-251), the former decisions and line of authority hereinbefore referred to, and said, (page 255):—

> "Considered, however, with reference to the main contention of the state, namely, *the want of power to make the grant of the entire water front at*

all, the argument treated the water front as one and indivisible for the purpose of the case, etc."

"Irrespective, then, of the extent, technically speaking, of the effect and operation of a decree as to the seven parcels based on that ground as *res adjudicata*, it is impossible to ignore the inquiry whether the interests of persons not before the Court would be so affected and the controversy so left open to future litigation as would be inconsistent with equity and good conscience."

"If this Court were of opinion that the City of Oakland occupied the position of the successor merely of the Town of Oakland; that the grant of the water front to the town was as comprehensive as is claimed by defendant, and that it had not been annulled by any act of the legislature, but also held that the State had no power to make such grant, *then the City of Oakland, would be deprived of the rights it claimed under the grant, not by the exercise of the legislative power of the State as between it and its municipality, but by a judicial decree in a suit to which the city was not a party.*"

"*And if the proceedings which purported to vest title in the Oakland Water Front Company were held ineffectual for the same reason, then the latter company would find the foundation of its title swept away in a suit to which it also was not a party.*"

The bill was thereupon dismissed.

A review of this entire line of decisions is also found in *Water Co. v. Babcock*, 76 Federal Reporter, 243, 248, 249, 252.

The principles announced in the foregoing decisions are also adopted as the ground of the decision in the case of *Land & Cattle Co. v. Frank*, 148 U. S., 603, (see opinion 610, 611). In that case suit was brought against the stockholders of a corporation, it being alleged that the corporation had distributed all its property to the stockholders and had ceased and suspended business. It was the claim that the stock-

holders were the real parties in interest; that as the corporation had turned over to them its property, they in fact and in law represented such corporation, and that it was not necessary that the corporation itself be made a party to the suit. This Court held, page 610, that:

> "The stockholders defendants, who have been served with process and entered their appearance, do not undertake to represent, and cannot in any way represent, the corporations against whom the claim for damages is asserted."
>
> "Now, it is too clear to admit of discussion that the various corporations charged with the fraud which has resulted in damage to the complainant are necessary and indispensable parties to any suit to establish the alleged fraud and to determine the damages arising therefrom * * *"

also:

> "Stockholders cannot be required to represent their corporations in litigation involving such questions and issues. The corporations themselves are indispensable parties to a bill which affects corporate rights or liabilities."

The Court thereupon proceeded to base the case upon:

> "The general rule that suits in equity cannot be entertained and decrees be rendered, when necessary or indispensable parties, whether corporations or individuals, are not brought before the Court."

As authority for this holding the Court cites, among other cases, *Shields v. Barrow*, 17 How., 130, 141, above referred to. The case was thereupon remanded with directions to dismiss the bill, etc.

In the case of *Taylor & Co. v. Southern Pacific Co.*, 122 Federal Reporter, 147, a suit was brought to enjoin the voting of certain stock at the election of directors of the Southern Pacific Co., it being the contention that the stock in question was illegally claimed to be owned and held by the

Union Pacific Railroad Company,—the Union Pacific and the Southern Pacific Companies being competing transcontinental lines,—and it being averred that the stock so owned by the Union Pacific was acquired for the purpose of dominating the operations of the Southern Pacific Company.

The Union Pacific Company was not served and did not appear as a party to the action. The absence of the Union Pacific Company was urged as a fatal objection to the maintenance of the bill and to granting any relief in the case; but it was replied that relief could be given against the parties who were before the Court, binding their intersts alone, and especially against the Southern Pacific Company.

Judge Lurton, in an opinion of great strength and clearness, said, on page 152:—

> " The direct effect of any such decree upon any of the theories upon which I am asked to act, would be to deprive the Union Pacific Railroad Company of one of the most valuable of the incidents of its ownership of its Southern Pacific shares,—the right to vote for managing directors at a meeting of stockholders. It is, therefore, according to every definition, an indispensable party to any bill which challenges its right to own or vote upon its Southern Pacific shares." " *It must be accepted as altogether fundamental that no Court can adjudicate upon the rights or interests of one who is neither actually or constructively before the court. The principle of due process of law unconditionally compels observance of the rule which limits the just jurisdiction of every Court to a determination only of the rights of persons who are parties to the litigation.*"

This doctrine is expressly based upon the authorities hereinbefore cited. Among other decisions, Judge Lurton discusses and cites *Mallow v. Hinde,* 12 Wheaton, 193, 198, and *Minnesota v. Northern Securities Company,* 184 U. S., 199. He also cites the case of *New Orleans Water Works v. New Orleans,* 164, U. S., 471, (see opinion 480).

In *New Orleans Water Works v. New Orleans,* it was alleged that certain rights which had been granted to various persons by ordinances of the City of New Orleans were in violation of the rights and privileges of the New Orleans Water Works Company. The persons for whose benefit the ordinances had been passed, and to whom the rights complained of had been granted, were none of them made parties to the suit. The plaintiff sought by decree to have the ordinances declared null and void and to require the same to be expunged, repealed and cancelled so far as they affected the complainant.

It was objected that necessary and indispensable parties were not before the Court and that by the decree prayed for their property would be taken without due process of law.

The Court, passing upon the questions raised, said, (page 48):—

> "We do not suppose that any precedent can be found that would justify a court of equity in giving such relief. A decree declaring the ordinances in question void would have no effect in law upon the rights of the beneficiaries named in the ordinances, for in the absence of the parties interested, and without their having an opportunity to be heard, the Court would be without jurisdiction to make an adjudication affecting them. *Such a decree would appear upon the very face of the record not to be due process of law and could be treated everywhere as a nullity.*"

The same principle is found decided in *Pennoyer v. New,* 95 U. S., 714, see 733; also *Windsor v. McVeigh,* 93 U. S., 274, see 277.

It is unnecessary to multiply cases further; they are uniform in sustaining the principle on which we rely, namely, that a judgment or decree which necessarily involves and adjudicates the rights of persons who are not parties to the suit, —the enforcement of which judgment against the parties to the suit results in enforcing it against such absent person,—is

in violation of the constitutional rights of such absent person and is an adjudication without due process of law.

Applying that principle here, there is no escape from the conclusion that the rights of the Pioneer Iron Company in the 99 year lease have been adjudicated,—and so "taken" in its absence without due process of law.

The decree complained of directly and in terms declares that the 99 year lease no longer exists as the property of the Pioneer Iron Company;—and its officers are thereby enjoined perpetually from asserting its rights therein. It is no answer to say that the individual defendants may be and are bound by this adjudication, but that the corporation may not be technically affected, because not a party to the judgment. None of the defendants had or claimed or were shown to possess any rights in this lease except such as were wholly dependent upon and involved in the rights of the Pioneer Iron Company; and the *enforcement of the perpetual injunction* complained of against the defendants individually and *in their representative capacity*,—necessarily involves the enforcement of that injunction, through them, against the Pioneer Iron Company itself. Its rights can only be available and valuable to it to the extent that they may be asserted and made useful through its agents and officers. These officers and agents are now enjoined from acting.

CLAIMS OF DEFENDANTS IN ERROR.

Defendants in error deny the *jurisdiction of this* Court to hear and determine the questions here raised, because they assert:

(1.) That the federal question here relied on was not set up and claimed by plaintiffs in error who were and are stockholders of the Pioneer Iron Company;

(2.) They further claim that the judgment complained of was based upon non-federal questions.

First.

Considering first the contention THAT THE FEDERAL QUESTION HERE INVOLVED WAS NOT RAISED ON BEHALF OF A STOCKHOLDER OF THE PIONEER IRON COMPANY, —we answer that the pleadings, the evidence and the decisions of the courts of Michigan, as shown by the Record, clearly refute this contention.

As hereinafter shown, the constitutional right now relied on was by answer in the Michigan Courts explicitly set up and claimed by William G. Mather in his own right, and as trustee for the Iron Cliffs Company,—both of said parties being stockholders of the Pioneer Iron Company.

The Record shows that ten shares of the stock of the Pioneer Iron Company belonged to William G. Mather personally and stood in his name, and that 3930 shares belonged to the Iron Cliffs Company, and stood in the name of William G. Mather as trustee. The exact proportions in which this stock was so owned were proved and the Court knew the facts. (Record, pages 517, 518, and pages 531, 534, 535 and 539).

Record, page 52 the answer of Mr. Mather sets forth that he owns said stock individually and as trustee.

Record, page 344, James H. Hoyt testified that in the year 1891 William G. Mather was President of the Pioneer Iron Company. This, of course could not have been true unless he was a stockholder.

On Record, page 350, Mr. Hoyt further testified that "the stock of the Pioneer Iron Company was held by William G. Mather, — the larger proportion of it as trustee, for a good many years.

Record, pages 517, 518, the exact holding and ownership of the stock of the Pioneer Iron Company in the year 1890 is shown by the amended articles of association of said company, taken from the books of the Secretary of State of Michigan. These books show that Mr. Mather owned:—

Individually	10 shares.
As Trustee	4930 shares

The 4930 shares being equitably the property of defendant the Iron Cliffs Company, as testified by Mr. Hoyt.

Record, pages 531, 534, 537, 539, it is shown that on April 6, 1901, Mr. Mather yet owned:

Individually	10 shares
As Trustee	3930 shares

The stock so held as trustee being the property of the Iron Cliffs Company, it having been testified that 1,000 shares had been sold during the ten years to Mr. Hale, General Garretson and others who were not parties to the suit.

The following holdings of such persons who were not parties, the Record shows (page 531) were as follows:—

E. V. Hale	Held 950 shares
George A. Garretson	Held 50 shares
Peter White	Held 10 shares
E. R. Perkins	Held 10 shares
Fred. A. Morse	Held 10 shares
J. H. Sheadle	Held 10 shares
James H. Hoyt	Held 10 shares
J. H. McBride	Held 10 shares

It is further shown (Record, page 555) that during the trial and argument of the case complainants by their counsel asserted the ownership of this stock by William G. Mather, *insisting that he was President of the Pioneer Iron Company, which would necessarily require the ownership of stock;* and further *insisting that he held stock as trustee for the Iron Cliffs Company.*

Nowhere does the record show a finding against Mr. Mather's ownership of this stock; on the contrary the fact of his ownership was assumed and practically, although not in so many words, found and determined by the Courts.

In addition to the foregoing and corroborative of the fact that the Michigan Courts as well as counsel for complainants were satisfied that defendants, who raised this federal question, were stockholders of the Pioneer Iron Company,—is the fact that on December 3, 1903, *the judges of the Supreme Court of Michigan,* after due consideration, allowed the writ of error herein, (Record, page 581), to this court; which but for the ownership of said stock and the fact that said federal question had been raised, would not have been done.

Federal Question Explicitly Set up and Claimed.

The exact rights which we are now asserting were set up and claimed in the Circuit Court of Marquette County, Michigan, by amendment to the answer filed by defendants, *which amendment was especially allowed by the Court for the very purpose of permitting the contention which we now make.*

On Record, page 52, in the amendment to the answer of William G. Mather, The Iron Cliffs Company and The Cleveland-Cliffs Iron Company, the following explicitly appears:—

> "And this defendant, William G. Mather, answering for himself, says that he owns *in his own right and as trustee* 3940 *shares of stock of said company* and that if any decree be rendered in this case by the Court in any way declaring a forfeiture or

> termination or expiration of said 99 year lease, or in any way affecting the rights of the Pioneer Iron Company thereunder, that said Pioneer Iron Company not being made a party to this proceeding, he as such stockholder and said Pioneer Iron Company would thereby be deprived of his and its property without due process of law, in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States, which forbids any State to deprive any person of life or liberty or property without due process of law, and this defendant avers that any decision or findings of the Court in any way limiting, terminating, changing, modifying, annulling or diminishing the value of any of the rights of the Pioneer Iron Company under said 99 year lease and as expressed therein would be void and of no effect under said provision of said amendment to the Constitution of the United States."

Thus explicitly invoking and claiming in behalf of all the stock so held by Mr. Mather, — (both for himself and the Iron Cliffs Company), — the protection of the federal constitution and the fourteenth amendment of the same.

It cannot be important *as to the method adopted to raise and assert this question* in behalf of these two stockholders who were the only stockholders of the Pioneer Iron Company who were made parties, since the state Courts were explicitly advised that the same was so raised. Again, the claim was also asserted for those stockholders by counsel in argument and by brief in their behalf, which alone would have been sufficient. How could this constitutional right be claimed and pleaded more strongly for the Iron Cliffs Company than by the trustee, holding in his own name these shares of stock?

> "Although no particular form of words is necessary to be used in order that the federal question may be said to be involved, within the meaning of the cases on this subject, *there yet must be something in the case* before the state Court which would at least

call its attention to the federal question as one that was relied on by the party, etc."

Bridge Co. v. Illinois, 175 U. S., see opinion 634.

That the Circuit Court of Marquette County clearly understood that this question was raised in behalf of all defendant stockholders, not only appears from the fact that after the evidence was closed the Court permitted this answer to be amended for the very purpose of claiming this federal question in exact and explicit form, — but it is also plainly evident from the opinions of both the Circuit and the Supreme Court of Michigan.

The Circuit Court in its opinion, (Record, pages 554, 555), says: —

"It is contended in behalf of the defendants that in any event the complainants are not entitled to a decree without making the Pioneer Iron Company a party to the suit;"

also on page 555:—

"They (complainants) also contend that the Pioneer Iron Company would be bound by the decree without making it a party, — for the reason that William G. Mather was the President of the company and the holder of a large majority of its stock as trustee for defendant, The Iron Cliffs Company."

Said Court found that it was not necessary to make the Pioneer Iron Company a party defendant.

In the Supreme Court the same right was asserted in behalf of said stockholders. The Court in its opinion says, (Record, page 569):—

"It is also urged as a fatal objection to the maintenance of this bill that the Pioneer Iron Company is not made a party."

Answering this the Court say, (Record, page 569):

"The defendants own, and have owned for many years, all its capital stock, etc., etc."

The Court, for the reasons stated, was clearly in error

in this statement, as more than 1000 shares were owned by persons not parties. See list of stockholders, page 44, *supra.*

We do not here purport to embody all the language of the Supreme Court, but sufficient only to indicate that the constitutional right was being claimed on behalf of all defendant stockholders. Said Supreme Court also on the same page determined that "The Pioneer Iron Company therefore was not a necessary party.'

It thus appears that the constitutional right was set up and claimed in behalf of said stockholders and was understood by both Courts and counsel for defendants in error to be so raised.

The decision of the constitutional question was also necessarily involved in the decision of this case; and the conclusion that the Pioneer Iron Company was not a necessary party to the suit is a square holding upon this exact question.

In *Water Co. v. Canal Co.*, 142 U. S., 254, see opinion 268, the Court say:—

> "This Court has frequently had occasion to hold that it is not always necessary that the federal question should appear affirmatively on the record or in the opinion, if an adjudication of such question were necessarily involved in the disposition of the case by the State Court."

It has been also held by this Court that the federal question "*is sufficiently set up and claimed*" *if such federal question was fully considered in the opinion of the Court and was ruled upon against the plaintiffs in error.*

Land & Water Co. v. San Jose Ranch Co., 189 U. S. 177-180.

From the foregoing it appears beyond doubt not only that the federal question here asserted was set up and claimed in the Courts below in behalf of these stockholders in explicit form, but that the Courts of Michigan understood such claimed right to be asserted and ruled upon the same adversely to the plaintiffs in error.

Second.

Answering the contention of defendants in error, THAT THE JUDGMENT COMPLAINED OF WAS BASED UPON NON-FEDERAL QUESTIONS, we have to say that such claim cannot be sustained as *matter of fact*. This will be manifest from an examination of the decree of the Circuit Court of Marquette County, which was affirmed in the Supreme Court.

Even though it may be conceded that in a controversy in which there was a non-federal question sufficient to sustain a judgment *as against parties to the suit*,—and if a federal question was also raised, this Court would assume that the decision was based upon the non-federal question and would not take jurisdiction;—still in the case at bar, as against the Pioneer Iron Company, which was *not a party to the suit*, there can be no question or issue, even though non-federal, which could support a judgment affecting its rights or property; *and the entry of judgment in such a case, inexorably involves a federal question to the exclusion of all others.* It follows that if by judgment of the state Courts, based upon any theory whatever, the property of the Pioneer Iron Company was taken or diminished in value, the same was so taken without process of law as against that company; and an invasion of its constitutional rights and those of its stockholders was thereby necessarily involved. *The existence of a federal question in this case, therefore, depends upon the practical results of the judgment complained of, viz; were the property or rights of the company thereby "taken" or affected?*

The effect of the judgment which was affirmed in the Supreme Court of Michigan is to determine the rights of the Pioneer Iron Company under the lease in question, and to find that by acts and defaults of said company, said lease was terminated and lost to it. The further result of the judgment was an injunction, — the enforcement of which will prevent the officers of the Pioneer Iron Company, as its representatives, perpetually from asserting its rights under said lease.

The rights of the Pioneer Iron Company and its property interests have, therefore, been practically decided and determined and a denial of the constitutional right of that company and of its stockholders is necessarily involved. *The question now for consideration, therefore, is; What was the substance of the thing done? What was the effect of the judgment rendered? rather than, What was the theory on which said judgment was based?*

An examination of said claimed non-federal questions *as now set out by defendants in error* will further illustrate the unsoundness of the proposition taken in this Court.

It is claimed, that, among the questions decided by the state Courts, were the following:—

1. That the Pioneer Iron Company died April 2, 1887, with the expiration of its first charter.

2. That the reorganization and extension was not in compliance with the law of Michigan, and was irregular and void.

3. That if the reorganization was effective to create or continue a corporate body, such corporation was not the Pioneer Iron Company which had been contracted with as lessee in the 99 year lease, nor its corporate successor within the meaning of the lease.

4. That the constitution and laws of Michigan, providing for the extension of the corporate existence for a second period of 30 years, with right and power in such renewed corporation to continue to own and hold corporate property, are in violation of the 14th Amendment of the federal constitution and hence void as against the defendants in error."

It is further claimed that the Supreme Court of Michigan decided that the Pioneer Iron Company was a "dummy," and notwithstanding its renewal and corporate reorganization

recognized by the state, it was not a real corporation having property and legal rights to be protected.

It is sufficient answer to all the above contentions that the Supreme Court of Michigan expressly declined to pass upon said contentions. In its opinion, (Record, page 576), said Court says:—

> "Various important questions are raised by counsel as to the effect of this reorganization statute, the validity of the act of reorganization by the Pioneer Iron Company, as to whether the Pioneer Iron Company was in position to avail itself of this statute; and also the effect upon the 99 year lease, should the reorganization be held valid. *Inasmuch, however, as these questions are not essential to a decision of the case, we refrain from determining them.*"

Thus intentionally leaving undisturbed and unaffected the validity of the reorganization and the corporate character of the Pioneer Iron Company, with all corporate rights given and recognized by the State of Michigan.

Under the undisputed conditions, even had the Courts of Michigan decided on the grounds so claimed that the 99 year lease was terminated, — the Pioneer Iron Company, not being a party to the suit, — such decision would have been clearly without due process of law, and an invasion of the constitutional rights of that company. If the regularity or legal effect of the organization of the Pioneer Iron Company was being drawn in question as a means of destroying its property, that company should have been permitted its day in court and a hearing in defense of its rights.

The Supreme Court of Michigan, it is true, said in its opinion, (Record, page 569):—

> "Under the allegations of the bill and as well under the proof, the Pioneer Iron Company *is used* as a "dummy" for the benefit of the defendant companies."

If in making this statement, more had been intended by the Court than merely to set forth the effect of the allegations made by and the proofs offered in behalf of the complainants, — if it *had decided a fact* as a reason for terminating the 99 year lease and as a basis for the perpetual injunction granted,—then such decision was one of the steps and determinations which we complain of as being in violation of the constitutional right of the Pioneer Iron Company. *The question of fact as to whether or not this company was used in any manner which would destroy its rights was one upon which it had the right to be heard.*

It is also claimed and emphasized in this connection that the books of the Pioneer Iron Company were not brought into Court and thrown open to inspection of competitors and adversaries. Had the Pioneer Iron Company been a party to the suit and had its books and accounts and its doings become germane to the action, such argument might have force, but when we consider that the Pioneer Iron Company was not made a party to the suit and that no step which could be taken by the defendants who were in Court, would serve to protect its property or its rights, the refusal to go into the private affairs of the company and to produce and throw open its books is amply explained. No proper or legitimate use of such books could have been made relative to any of the issues between the parties before the Court, because the Pioneer Iron Company was not in the case and the books were the books of that company. The only apparent uses which might have been expected were to give other competing corporations a knowledge of its private business.

Upon any view of the proceedings and judgment of the Courts of Michigan, the effect and the result is *the taking and the destruction of the rights and property of the Pioneer Iron Company in a suit to which it was not a party*, and the destruction and diminution in value of the stock and holdings of the plaintiffs in error, stockholders of that company, without

due process of law, and without being represented or having an opportunity to appear and defend the rights so taken. The judgment, therefore, of the Courts of the State of Michigan, should be by this Court reversed and the case should be ordered remanded and dismissed.

The questions actually decided by the Michigan Courts show necessity for presence of The Pioneer Iron Company, and that its constitutional rights were violated.

We have said that the entire relief asked for by the bill against the defendants in the state courts was based upon the claim that the 99 year lease had ceased to exist as the property of the Pioneer Iron Company, and that the same should be declared terminated and at an end.

We have also shown that the courts of Michigan were of necessity required to and had adjudged said lease to have terminated upon the grounds and for the reasons set out in the bill. *We cannot here more strongly illustrate or set forth the necessity for the presence of the Pioneer Iron Company as a party to the suit and the injustice and destruction which has resulted to it and to its stockholders from the adjudication of its rights in its absence, than by stating more in detail the claims set up in the bill as grounds for terminating this lease, together with the findings and determinations relative to the same.* In this manner it will be concretely seen not only that defendants who were in Court were nominal and formal merely, and legally powerless to defend, but also that the holdings upon these several claims relative to this lease, were apparently so unjust and at variance with all precedent that had the Pioneer Iron Company been present with power to introduce its complete defence, the result should and probably would have been a different one, protecting rather than destroying vested property rights.

The record shows that after setting out the execution to the Pioneer Iron Company of the 99 year lease and the facts showing that they had succeeded by mesne conveyances to the

titles of Harvey and of Reynolds respectively in the lands in question, the complainants in their bill proceeded to allege facts which it was claimed *had terminated said entire 99 year leasehold as the property and right of the Pioneer Iron Company,* by reason of which it was averred that said lease was void, but remained as a cloud merely upon complainants' title, which should be removed by declaring the lease void, and by quieting said title.

Five claims and grounds were asserted as reasons why said 99 year lease had become and should be decided void. (Record, pages 10 and 11). They were:

1. That the right given in said lease to enter upon said lands and to mine for and take ore therefrom, was confined and limited to the taking such ore only as was required for use in its own furnace then being built at Negaunee; that such furnace so built had been abandoned and dismantled and the rights of the Pioneer Iron Company under said lease were, therefore, terminated.

2. That the right which Harvey received from James L. Reynolds to mine ore for manufacturing purposes, without accounting to Reynolds therefor, was an indivisible right, which was not susceptible of assignment except as a whole; and that the 99 year lease given by Harvey was an attempted assignment of a part only of said entire right, — by reason of which it did not and could not vest in the Pioneer Iron Company any right or interest in the minerals reserved to said James L. Reynolds.

3. That by abandonment, the rights granted to the Pioneer Iron Company had become terminated and had reverted to Harvey, the grantor.

4. That the corporate existence of the Pioneer Iron Company had expired by constitutional limi-

tation in April, 1887, and that whatever rights and privileges had been acquired by the Pioneer Iron Company under the 99 year lease thereby became terminated.

5. By amendment, (Record, pages 49, 50), it was claimed that if the Pioneer Iron Company had been reorganized under the amendment to the constitution of Michigan and the statutes passed pursuant thereto, and if, as so reorganized, said company appeared to retain rights under said 99 year lease, yet the statutes under which it was so reorganized were in violation of the constitution of the United States, and so void, — by reason of which said company retained no property rights in said lease.

For each and all of said reasons, and upon said grounds respectively, the complainants claimed that the Pioneer Iron Company had lost said 99 year lease; and the termination of the same should be decreed by the Court.

It was also averred that *said lease having terminated,* the defendants were, therefore, wrongfully acting in asserting the rights of the Pioneer Iron Company thereunder. It being necessary, therefore, before any decree or judgment could be rendered in the case, to pass upon and decide the rights of the Pioneer Iron Company under the 99 year lease, *and to find as a basis for injunction that said lease had terminated and was void,* — it is evident on the face of things that the right to any remedy against defendants *was dependent upon the finding that there was a right to a remedy against the Pioneer Iron Company,* and that on some one or more of the grounds hereinbefore stated, said 99 year lease should be found void.

IT IS OUR CLAIM THAT NO JUDGMENT SHOULD HAVE BEEN RENDERED IN THE CASE AGAINST THE DEFENDANTS WITHOUT FIRST PERMITTING THE PIONEER IRON COMPANY TO

BE HEARD UPON THE QUESTION OF THE TERMINATION OF ITS RIGHTS.

Even a casual consideration of the reasons advanced for declaring this leasehold terminated will make plain and demonstrate the justice of the position which we take.

Not one of the reasons advanced in the bill as grounds for terminating the 99 year lease is found on the face of the instrument itself. They depend in each instance upon alleged facts, outside of the lease, raised by parol and being in the nature of additional terms and conditions, or of subsequent claimed acts or defaults. Each of the claims so made was issuable, and as to each the Pioneer Iron Company had the right to be heard before its property could be found and adjudged to have been lost.

Reasons Alleged by Defendants in Error for Terminating the 99 Year Lease.

First.

THAT THE LEASE WAS APPURTENANT TO THE FURNACE AT NEGAUNEE; THAT SAID FURNACE HAD BEEN DISMANTLED AND DESTROYED PRIOR TO THE SUIT, AND THAT, THEREFORE, THE LEASE WAS TERMINATED AND AT AN END.

No such condition or provision is found in the 99 year lease itself. (Record, pages 18, 19). The plain and express language of the instrument is directly opposed to such a claim. It gives in terms the *general right to mine and remove iron ore from said land,* "subject to the provisions hereinafter mentioned."

To determine whether or not the 99 year lease was intended as a bare appurtenance to a furnace,—and to properly interpret said lease in that respect, the Court must place itself in the position of Harvey and his associates in the year 1857,

just prior to and at the time of the organization of the Pioneer Iron Company. Harvey was then inducing his associates to invest their money and go into the Pioneer Iron Company with him. He was to be the largest stockholder and the manager of the company. It was his enterprise. He took upon himself the negotiation for and purchase of lands from Reynolds for the use and benefit of the company then being organized. In the conveyance from Reynolds "the sole right," — "to mine for their own use or for *manufacturing purposes within the present limits of Marquette County,*" was undoubtedly obtained for the benefit of the Pioneer Iron Company which was then being organized "for manufacturing purposes."

Harvey himself, (Record, page 419), testified:—

"I negotiated these deeds and contracts in the State of Michigan. I was their (his associates) agent and trustee in that state. That is, I was *their agent trusted by them.* I was never an official trustee, of course. They trusted me to do these things for the company. I promoted the company; that is, originated the company; got these other gentlemen to take stock and join me in the enterprise. Perhaps the use of the word "promoter" might not be proper, because I was taking an interest myself. Generally promoters are selling out. *I retained the largest interest in the start*, but I was what you would call the originator, the person who first suggested the plan. These other gentlemen who went in with me and constituted the company paid their money into it and also paid their assessment subsequently as I did."

He also testified, (Record, page 448):

"I believe at that time there was a great future for the Lake Superior country, and especially Marquette County, in the development of a charcoal pig iron industry. It was generally anticipated both by myself and Mr. Reynolds and others that if we could start one or more furnaces there it would give a considerable impetus to that infant industry."

So that the deed from Reynolds with contract "A," attached and the subsequent transactions were for the Pioneer Iron Company. It was explicitly understood that iron ore might be mined free of charge or accounting, — *to be manufactured within Marquette County.* This was the careful wording of the instrument between Harvey and Reynolds, but made for the benefit of this "infant industry," being organized. Their purpose was to get more factories into that county, not to restrict them; to create a greater demand for charcoal iron, not to narrow the rights obtained.

Examine now the conveyances which Harvey made to the Pioneer Iron Company of the rights and property which he had obtained for himself and his associates in that enterprise. On April 22, 1857, the deed for 3488 acres, was made to the Pioneer Iron Company, subject to the reservations, etc., in the deed from Reynolds to Harvey. At the same time a "*preliminary agreement*" was executed from Harvey to the Pioneer Iron Company, (Record page 408-9). By the terms of this agreement Reynolds conveyed in perpetuity to the Pioneer Iron Company the right, free of charge, to mine such iron ore "as it should convert into merchantable iron *in its own establishment.*"

Harvey testified relative to this agreement, (Record, page 492):—

> "That it was not regarded as anything final, as I said before. Simply a safeguard against anything happening to me until the thing could be consummated, simply as a memorandum entirely superseded by the one dated later and given in the nature of a protection against anything that might happen to me in the meantime before the other was consummated."
>
> "The instrument as finally executed and acknowledged and recorded was the agreement."

It appears from the record that matters went along without more definite stipulation until about September 17th,

1857. In the meantime *Harvey had gone to New York and met his associates,* the names of whom he tells, (Record, page 491). In his testimony, (Record, page 493), he says upon this subject:

> "*When I got home from New York to Michigan I then executed the* 99 *year lease,* which is the instrument of record, and caused it to be recorded."

Further, (Record, page 494):—

> "Q. What was said between you?"
>
> "A. *They appointed a committee to examine into the matter and they reported that it was in proper shape,* — a committee of the board. All the talk and passing of minutes back and forth, done nearly fifty years ago, has, of course, pretty nearly faded out of my memory."

At this meeting in New York, Harvey met his associates and with their committee finally agreed upon the terms of the 99 year lease. It will be observed that the *preliminary agreement was changed* in two particulars, one of which is most significant as to the nature of the rights finally granted, and as showing the evident and express purpose *of enlarging the uses provided for by the "preliminary contract."* It was provided *by the "preliminary contract"* (1.) that the rights should be in perpetuity; and (2.) *that the Pioneer Iron Company should have the right to mine ore for use, in its own establishment."*

By the 99 *year lease* it *is* provided:

(1.) That instead of the right in perpetuity. — the same should last for 99 years; and

(2.) That instead of the right to take ore "to be converted into merchantable iron "*in its own establishment,*" it should have the right to mine or remove such ore as it "shall actually convert into merchantable iron "*in its own furnaces or forges.*"

The latter of which changes was obviously made to avoid the very claim now being advanced, namely; that in-

stead of "iron ore for use in a *particular establishment*," the instrument should be made to grant rights generally to mine ore for use in the furnaces and forges of the company.

This modification was no accident, but was purposely made. The parties thus intentionally changed and enlarged the rights proposed to be given them, so that the 99 year lease would convey a mining right, "*subject to the terms hereinafter stated*," without limit, except as to the natural expansion of the Company.

In the light of all these admitted facts, and construing the words of the instrument most strongly against the grantor (Trustee of the company), how should this 99 year lease be construed relative to the claims made by defendants in error?

Was it intended as a appurtenance to the furnace at Negaunee? or was it a grant of a right to take ore to be converted into iron *in the company's own furnaces or forges, within the present limits of Marquette County?*

We have said that no such condition or provision as that now insisted upon, *making the lease an appurtenance*, is found in the 99 year lease itself. It gives the general right to mine and remove iron ore from said land, "*subject to the provisions hereinafter mentioned.*"

Among the provisions thus referred to, there are two (and only two) which limit the right to mine and take ore, and designate where and how the same shall be used. They are:

1. "Provided it shall not quarry, mine or remove any ore on said land except such as it shall actually convert into merchantable iron *in its own* furnaces or forges."

2. "All the above rights and easements are subject, however, to the *terms of a certain deed and agreement accompanying the same, executed by James L. Reynolds* and wife to the party of the first part on the 26th day of February, 1857, etc."

thus making the said Reynolds *deed and agreement* (which had really been obtained for the Pioneer Iron Company) a part of said lease.

The agreement with Reynolds so referred to is this (Record, page 15):

> "Provided,—and it is agreed, however, that the party of the second part or his assigns shall have the sole right, free of cost or compensation to the first party, to mine, for their own use, *or for manufacturing purposes, within the present limits of Marquette County*, any mineral ores or marble found on any of the premises herein referred to; but shall have no right to sell to other parties for exportation, as aforesaid, without accounting to the party of the first part for his joint half interest therein."

It is thus seen that by the express terms of the 99 year lease, the right is given the Pioneer Iron Company to mine for and take iron ore which it shall *actually convert into merchantable iron*, (1) in *its own* furnaces and forges; and (2) that such furnaces and forges shall *be within the then limits of Marquette County*.

It will be noted that Harvey made this lease to the Pioneer Iron Company covering land *which he had really bought for it*. The fact is also to be considered that by the lease he reserved no right in himself to mine or take iron ore from this property; and that by no word in the instrument does the grant limit the amount of ore to be taken, except that it shall be "such ore as shall be converted into merchantable iron in *its own* furnaces and forges."

By no word in the lease is the company limited in the growth of its business or as to the number, location or condition and improvement of its furnaces and forges, — except that the same must be *within the present limits of Marquette County*." It is evident that the interests of the company,

of which Harvey was then the confidential agent, were opposed to such provisions.

Although Harvey was the manager of the company, acting for it, and with full knowledge of all its purposes and of the agreements which were intended to be made, and therefore could and should have inserted all the limitations and provisions which were covered by the agreement being entered into, — *it is a noticeable fact that no such limitation was made as that now asserted by complainants.* The instrument does not deal with or cover the manufacturing branch of the company's business. It is confined to a grant of mining rights and the easements in the surrounding premises, including rights of way and other surface privileges. *Such is the lease as actually made.*

To substantiate the claims made in their bill, it was necessary that complainants, *by parol contemporaneous evidence,* change the entire nature of this instrument. Instead of a *grant of mining rights,* which should, as therein stated, "descend to the corporate successors of the Pioneer Iron Company," it became necessary, by parol additions, to change the same to *a bare appurtenance to a furnace at Negaunee,* — "*a mere incident necessarily connected with the use of that furnace.*"

Jones on Real Property, Sec. 1636;
Humphreys v. McKissock, 140 U. S., 304, 313.

Aside from the history of the transaction and the plain words of the instrument, there is another consideration which strongly and conclusively confirms the conclusion that the 99 year lease was intended as a grant of mining rights to take iron ore for use in "*their own furnaces and forges within the present limits of Marquette County.*"

By the terms of the instrument it was provided that "the rights and easements above mentioned shall descend to the corporate successors of the party of the second part, *but not to its assigns.*" (Observe the grant was not made to

the owners of the furnace at Negaunee, or to the corporate successors with, or in connection with, or provided they continued to operate, this furnace.)

The rights and easements granted were not assignable. If, therefore, said mining rights were appurtenant merely and incidental to the Negaunee furnace, that furnace could not be sold or transferred without thereby avoiding and forfeiting the 99 year lease.

If the lease itself was appurtenant to the furnace, *and was not assignable,* it follows that the furnace to which it was so attached could not be conveyed or transferred without at once destroying the appurtenant lease. Such a condition would be plainly against public policy.

Anderson v. Carey, 36 Ohio State, 506;
Mendelbaum v. McDowel, 29 Mich., 78;
McClery v. Ellis, 54 Iowa, 311;
Jones on Real Property, Sec. 660.

A construction leading to such results should, therefore, be avoided.

No ambiguities or uncertain language requiring or permitting parol explanation are to be found in the lease. The rules of law, requiring strict construction most strongly against grantors, and especially against a grantor standing in a trust relation to the grantee, and being himself the person who accepted the grant for the grantee,—were all opposed to this claim that the lease should be found and determined a mere appurtenance to a furnace.

This contention was heard and decided, and on parol evidence the court practically at one and the same time *made for the parties a new lease, — and declared the same terminated, because of acts and defaults specified and found to be in the new, but in fact not covered by the terms of the old leasehold.*

In such a proceeding the Pioneer Iron Company should have been heard. It was the only party legally interested in the lease or in its preservation; and had that company been before the court a decision so at variance with the evident purpose of the lease itself, and with the legal duties of the parties to the same, could hardly have been rendered. The relation of Harvey to his trust would have been taken into account, and no unjust or unconscionable advantage would have been permitted, either as the starting point of the rights of either of the original parties, or as the basis for the termination of those rights *at the instance of persons who bought with full knowledge of the existence of the lease.*

Second.

The second of the grounds asserted by defendants in error for the termination of this leasehold right is; THAT BY CONTRACT "A" ATTACHED TO THE DEED FROM REYNOLDS TO HARVEY (Record, page 15), THE PROVISION WHEREBY HARVEY AND HIS ASSIGNS WERE PERMITTED TO MINE FOR MANUFACTURING PURPOSES WITHOUT ACCOUNTING TO REYNOLDS, CONSTITUTED A CLAIMED INCORPOREAL HEREDITAMENT WHICH WAS INDIVISIBLE, AND NOT SUSCEPTIBLE OF ASSIGNMENT EXCEPT AS A WHOLE; THAT BY THE EXECUTION OF THE 99 YEAR LEASE TO THE PIONEER IRON COMPANY HARVEY ATTEMPTED TO DIVIDE SAID INCORPOREAL HEREDITAMENT AND THUS DESTROYED THE SAME, — by reason of which the Pioneer Iron Company acquired no right as against Reynolds to mine for ore without accounting.

This claim so advanced by complainants (who were at most remote grantees of Reynolds), raised a controversy in which the Pioneer Iron Company had a right to be heard, and

to which it was an indispensable party. The substance of the claims made by complainants was, when taken in the light of the facts shown by the record, — that, although Reynolds had conveyed to Harvey for the very purpose of enabling him to interest capital in the organization of the Pioneer Iron Company, and to use this land as an inducement to the establishment of iron manufacturing industries;—and although he knew of this grant to the Pioneer Iron Company, and, in fact, accepted $25,000 of his purchase money directly from that company (without objection or protest so far as the record shows—and without subsequent proceedings of any character to terminate the rights on which this company would rely as a basis for their investment) — *yet by the very act of the making and delivery of the 99 year lease, the provision of contract "A" by Reynolds to Harvey and his assigns, became null and void. And, although no objection or adverse claims were made by Reynolds himself, yet after fifty years the complainants, who claim as his grantees, may now assert the right to forfeit and terminate this mining grant referred to in contract "A"* of the deed from Reynolds to Harvey.

Even if we assume for the sake of argument (what we do not admit, but deny), that the proviso in contract "A" (Record, page 15), created an incorporeal hereditament in Harvey, and that by reason of the facts alleged in the bill, Reynolds himself might, *for such claimed division*, have terminated and forfeited this mining grant, *had he acted at once;* yet after all this lapse of years, during which the capital stock of the company was permitted to be transferred and sold in apparent safety, and during which the generation of that time passed away, even *Reynolds himself, if before the court, would now be estopped from asserting such an inequitable and unjust claim.*

Harlow v. Iron Co., 41 Mich., 533 (see opinion);
Campau v. Iron Co., 50 Mich., 578, see 595;
Jones on Real Property, Sec. 1814, n. 1;

Pomeroy, Eq. Jur., Secs. 817, 1359, 687, 897, 916, 965.

But assuming only for the sake of argument, that either Reynolds or Harvey might have caused a forfeiture of the rights of the Pioneer Iron Company under the 99 year lease for breach of the implied condition that an incorporeal hereditament may not be divided, or for other claimed breach of condition, yet such *rights of forfeiture did not pass to the grantees of those original parties.*

Jones on Real Property, Secs. 696, 708, 728, 729.

Those rights to forfeiture were not part of the estate. They were at most causes of action (personal to the owners of the land), and did not pass from the original grantors by their subsequent deeds of conveyance.

Ruch v. Rock Island, 97 U. S., 693;
Jones on Real Property, Secs. 696, 697, 728, 729;
Hayward v. Kinney, 84 Mich., 596.

A breach of such conditions or implied conditions does not *ipso facto* work a forfeiture of the freehold estate to which they are annexed, but only vests in the grantor or his heirs *a right of action which cannot be transferred to a stranger.*

Jones on Real Property, Sec. 708;
Schulenberg v. Harriman, 21 Wall., (U. S.), 44, see 63;
Ruch v. Rock Island, 97 U. S., 693;
Gross v. Carson, 47 Amer. Dec., 754, n.;
Hubbard v. Hubbard, 93 Amer. Dec., 75.

In *Ruch v. Rock Island*, 97 U. S., 693 (see opinion, 696), Mr. Justice Swain uses the following language:

> "The estate continued in full force until the proper step was taken to consummate the forfeiture. This could only be done by the grantor in his lifetime, and after his death by those in privity of blood with

him. In the meantime only a right of action subsisted, and that could not be conveyed so as to vest the right to sue in a stranger."

"Owing to the common law rule, that the possibility of reverter belonging to a grantor of an estate upon condition subsequent, is not such an interest before entry for a breach as can be legally conveyed to a stranger; a conveyance of such an interest operates as a discharge of the condition, for while it deprives the grantor of his right to avail himself of a breach, it does not transfer such right to the person to whom he attempts to grant it."

Conditions can only be reserved for the grantor or his heirs. A stranger cannot take advantage of a breach of them.

4 *Kent Comm.*, Sec. 56.

Where a covenant is broken and the property is afterwards sold, the right of action (for breach of covenant) does not pass with the deed. The deed does not operate as an assignment of the cause of action.

Peden v. Ry. Co., 73 Ia., 328.

It therefore appears by an unbroken chain of authority that even though contract "A" created an incorporeal hereditament, one of the implied conditions of which was that the same should not be divided, for which, if so divided Reynolds himself while the owner of the estate might have caused a forfeiture of the right, — his grantees, the present complainants, did not receive from him a conveyance of his right to insist upon such forfeiture.

Even though it were claimed that the 99 year lease itself created only an incorporeal right, and that the same had been divided, — by reason of which division *Harvey might himself have forfeited such leasehold*,—yet his grantees, the present complainants, received by their conveyance no assignment of his right of action.

FORFEITURE WAIVED.

BOTH REYNOLDS AND HARVEY AND THEIR GRANTEE WAIVED ANY RIGHT TO FORFEITURE BECAUSE OF DIVISION OF A CLAIMED INCORPOREAL HEREDITAMENT.

On February 1, 1871 (Record, page 182), *Reynolds* executed a lease to Edward Breitung (the grantor of defendants in error). By said lease he expressly recognized the rights of the Pioneer Iron Company *under the 99 year lease,* and Breitung agreed to permit that company to exercise its rights under said lease. *Reynolds thus clearly recognized the continued existence of the 99 year lease,* and Breitung not only took subject to said lease, but agreed that he would himself recognize the rights therein conveyed.

On February 1, 1871 (Record, page 178), *Harvey* executed a lease to Edward Breitung, in which instrument the same 99 year lease is also expressly protected, and Breitung agreed that he would permit the exercise of the rights of the Pioneer Iron Company thereunder.

The Record also shows, pages 196, 197, and also page 177, that Breitung himself made mining leases to various parties, — all of which were expressly subject to the reservations in said leases hereinbefore referred to, executed to Breitung by Reynolds and Harvey respectively.

Under such express recognition and reservation of the 99 year lease and all rights granted thereunder, not only by Reynolds and by Harvey in person, but also by Edward Breitung (through whom defendants in error mainly claim), how can these grantees, defendants in error, now assert the right of forfeiture because of the execution of the 99 year lease, or because of any claimed division of an alleged incorporeal hereditament?

If Reynolds had a right to forfeit contract "A" because of the execution of the 99 year lease, he did not assert that right, but expressly waived it.

Even if Harvey had a right of forfeiture because of any claimed violation of either express or implied conditions of said 99 year lease, he did not assert that right, but expressly waived it.

Edward Breitung, the grantee, in so many words agreed to recognize the 99 year lease and the privileges conveyed thereby.

The present defendants in error acquired all rights asserted by them in this case with full notice and knowledge of the property rights and privileges of the Pioneer Iron Company which they now seek to destroy.

In any possible view *of this technical claim to a right of forfeiture,* no court of equity could have countenanced the position taken by defendants in error *had the Pioneer Iron Company been a party to the suit.*

"Contract A" created a RESERVATION for Life of Reynolds Only.

The foregoing discussion and considerations have been upon the assumption that "*Contract A*" attached to the Reynolds deed created a valid exception from the grant by Reynolds to Harvey and that the same passed and descended to the heirs and grantees of Reynolds, as claimed by defendants in error.

We do not in fact concede these claims. We deny that "Contract A" was intended to or could constitute "*an exception*" from this grant. *It was plainly "a reservation,"*—a right of an incorporeal nature granted by Harvey *to* Reynolds and attached to this property as a part of the consideration *given by Harvey for the deed of the land.* This reservation did not run to the heirs and assigns of Reynolds; hence it was for his life only.

If "*Contract A*" was intended and could be construed to be an *exception,*—it was repugnant to the grant.

The land conveyed was mainly valuable for its minerals and it was largely the minerals which induced the purchase by Harvey. The deed to Harvey conveyed in terms "all the right, title and interest" of Reynolds in the *entire estate.* In the warranty clause it is provided; "that said lands are sold *with full warranty,* subject, however, to the conditions and agreements of "Contract A" herewith appended, etc., etc."

If "Contract A" thus referred to had been intended as an exception from the deed, and a withdrawal from the grant, (already expressly made), of a full one half of the mineral estate thereinbefore conveyed, such an exception is repugnant to the grant and must be held void.

Erickson vs. Michigan Land & Iron Co., 50 Mich., 608;
Cutler v. Tufts, 3 Pickering, 272;
1st Jones Real Property, Secs. 515, 516.

A party to a deed should not be presumed to intend to grant and convey his entire estate, and later, in the same instrument, withdraw from the grant and retain in himself one-half of the interest already conveyed. Reynolds did not by this conveyance intend such an incongruity. *No exception from the grant was intended at the time.* As hereinbefore stated, the deed which Reynolds and his wife executed to Harvey was in fee simple absolute, covering repeatedly and by most sweeping and explicit language all the estate, right, title and interest which Reynolds had therein. It was *in the warranty clause* that "Contract A" was mentioned. The language there used is significant;—"which said lands are sold *with full warranty, subject, however, to the conditions and agreements of "Contract A,"* herewith appended, between the parties hereto concerning *the undiscovered minerals* on said lands."

"Contract A" is thus referred to and *treated as an encumbrance,*—then and thereby created and fastened upon these lands by this agreement.

It will be noted that the consideration for the conveyance of the deed is peculiar. The deed itself says,"*in consideration of the sum of* $30,000." "Contract A" says;—"that the first party has this day conveyed by "warrantee" deed to the party of the second part certain lands, etc., etc., *for the consideration of the sum therein named, and also for the further consideration of reserving to himself an undivided half in and to the minerals which have been or may be discovered* on the premises referred to as conveyed,—together with the right, etc., etc." Harvey, then, agreed to pay to Reynolds as consideration for the lands in question the sum of $30,000, *and the conditions and agreements of "Contract A,"*—which were made an encumbrance upon the property.

This instrument is called by the parties "*a reservation,*" and while this term is not conclusive of the nature of the rights "reserved," it is to be considered together with all other facts. *What was the nature of the "conditions and agreements" of "Contract A?"* Were the rights therein specified such as to constitute "*an exception,*"—a keeping of a part of the estate; or a "*reservation,*"—a creating of new, incorporeal rights, *granted by Harvey to Reynolds?*

The deed itself refers to the "conditions and agreements," —"*concerning the undiscovered minerals on said lands.*" Contract A speaks of such agreements as "*reserving*" to himself *an undivided one-half in and to all the minerals which have been or may be discovered on the premises referred to as conveyed*, together with the right of *having or acquiring* so much of the surface privileges as may be necessary to mine, etc., by paying, etc." The record shows that no minerals had at that time been discovered in any valuable quantities. Where were the minerals located that were so "reserved?" To how much of the premises conveyed did this right attach? Where was that part located? What surface privileges were necessary or required by Reynolds? All these questions were, and of necessity must have been, unknown to the parties themselves. It is therefore plain that the rights

"*reserved*" to Reynolds, and provided for in "Contract A" consisted only of "*contingent, indefinite, floating and incorporeal rights to prospect for and acquire surface privileges for mining, and for minerals should minerals be discovered.*"

In *Harlow v. Mining Co.*, 36 Mich., 105, such rights were *decided to be incorporeal in their nature.*

Had Harvey purchased this entire property from Reynolds, and thereafter in the exact terms of "Contract A," *granted the same rights to a third person,* he would thereby undoubtedly have created an incorporeal right in that person,—simply a right to discover and take out minerals when found, and a right to acquire the necessary surface privileges upon *some* indefinite portion of the land. In principle this right was analogous to the taking of water from a spring,—or the creating and operation of a mill race,—the discovering and taking of coal, and the like, — all of which have been decided to be incorporeal in their nature. But, by the very terms of this instrument Harvey, for a valuable consideration, deeded and granted to Reynolds just what he would have conveyed to a third person.

In its nature, therefore, the estate granted to Reynolds was "*a reservation,*"—and not an exception of any designated part of the estate.

The very difference between an exception and a reservation is this; that whereas *an exception* keeps *in the grantor* something which has never passed from him with the deed, —*a reservation* operates to create a new estate or right as a grant back from the grantee to the grantor.

Stockbridge Iron Co. v. Hudson Iron Co., 107 Mass., 321.

Such we claim is the interest which was acquired by Reynolds.

Being thus merely a contract right, creating an incorporeal interest of an indefinite nature in Reynolds, since

"Contract A," by its terms, was not made to run to *the heirs of Reynolds,*—it must be construed as a right only for his life and ending with his death.

Jamaica Pond Aqueduct Co. v. Chandler, 9 Allen, 170;
Curtis v. Gardner, 13 Met., (Mass.) 460;
Shields Exr. v. Delo, 145 Pa. St., 393;
Lathrop v. Elsner, 93 Mich., 599.

For the foregoing reasons, if for none other, the heirs and grantees of Reynolds have no rights whatever under *"Contract A;"* and they cannot now be heard to demand the forfeiture of the 99 year lease, because of a division of a claimed incorporeal hereditament.

"Contract A" even though an Exception, created no Incorporeal Hereditament in Harvey.

Harvey and Reynolds became tenants in common of the minerals.

Even if we are wrong in construing "Contract A" as *"a reservation,"* to Reynolds, and if it could be found to constitute *"an exception,"*—keeping in Reynolds and his heirs an undivided half interest in the minerals, yet no incorporeal hereditament was by that contract and its proviso *granted to Harvey.*

Assuming that "Contract A" was an exception from the grant,—Harvey then became the owner in fee of all the surface and of one-half of all the minerals,—and Reynolds retained the ownership in the remaining one-half of such minerals.

Harvey and Reynolds then, as to the minerals, became tenants and owners *in common.*

Harvey and his grantees then, *as matter of law,* had the undoubted right to mine at will, so long as they did not exclude Reynolds from doing the same.

Barringer & Adams, Mines & Mining, 18, 744;
McCord v. Oakland, 64 Cal., 134;
Jones on Real Property, Sec. 1914;
Kean v. Connelly, 25 Minn., 222, 225.

Without contract, Harvey as tenant in common or joint tenant had the right to mine for and dispose of iron ore from this property and the only duty which he as such tenant in common would have owed to Reynolds was simply that of *accounting for the undivided one-half of the iron ore so mined less the expense incurred.*

Jones on Real Property, Secs., 1914, 1918;
McCord v. Oakland, 64 Cal., 134;
Washburn on Real Property, 436;
Barringer & Adams, Mines & Mining, 19, 25; 26, 744, 746, 747;
Revised Statutes of Michigan, Sec. 5778;
Fuller v. Sweet, 30 Mich., 242;
Coleman's Appeal, 62 Pa. St., 252.

Owning the fee with the entire surface right, Harvey might also have conveyed the same even in parcels with his full and entire undivided interest in the minerals thereunder, without further contract.

4 *Kent Comm.,* 368.

These being the legal rights of Harvey and his grantees, what is the effect of *the proviso found in "Contract A,"* attached to the Reynolds deed? It was intended to be and was, in so many words, *a waiver of the duty which Harvey would otherwise have owed to Reynolds, to account* for the ore which he or his assigns might mine and take out for *"manufacturing purposes within the present limits of Marquette County."* But it expressly provides that *this waiver does not extend to ore sold by Harvey to other parties for exportation.* As to such ore it says; "but shall have no right to sell to other parties

for exportation as aforesaid *without accounting to the party of the first part for his joint interest therein.*"

How, then, upon any construction, could *this proviso* create an incorporeal hereditament in Harvey,—a new right in him, simply engrafted on and connected with his landed estate, but not otherwise a part of his fee simple, and not in any manner merged therein? As said in *Barringer & Adams, Mines & Mining, page* 25, citing *Coleman's Appeal,* 62 Pa. St., 252, — "it is not conceivable as matter of law that a man can have an incorporeal right to dig ore in his own fee."

Such a theory would be at variance with every principle of law relating to real property. All the permanent and attendant rights and property interests which result in connection with this proviso necessarily merged in Harvey's fee simple estate.

Morgan v. Menth, 60 Mich., 238;
10 *Am. & Eng. Ency. of Law,* 433;
Warren v. Blake, 89 Amer. Dec., 748;
Washburn on Real Property, pp. 80, 89.

Had the Pioneer Iron Company been a party to this suit, with power to assert and defend its rights, the plainest considerations of justice and right would have prevented the forfeiture decree because of a claimed division of an alleged incorporeal right *in Harvey,* for the following reasons:—

(1.) Reynolds and his grantees were estopped to assert the same and had waived such forfeiture even if Reynolds retained rights under which he might have asserted it.

(2.) *Reynolds had no exception,* but received by Contract A only "a reservation," which ended with his death.

(3.) "Contract A" created no incorporeal hereditament *in Harvey* which could be lost by division.

Third.

The third claim set up in said bill as a ground for terminating the 99 year lease is; THAT SAID LEASE HAD BEEN ABANDONED BY THE PIONEER IRON COMPANY, AND THAT THE RIGHTS OF THAT COMPANY THEREUNDER, HAD "REVERTED TO HARVEY AND HIS GRANTEES AS AFORESAID."

The abandonment was claimed because of alleged delays and alleged positive acts, which defendants in error insisted had worked the loss and termination of the lease.

This question, like the others hereinbefore referred to, was heard, considered and passed upon by the Michigan Courts, and the Pioneer Iron Company now finds itself divested and dispossessed of its property, although unheard and unrepresented, in the suit.

The record shows that this claimed abandonment was based upon evidence that no active mining had been carried on by the Pioneer Iron Company upon the property in question; that the furnace at Negaunee had been abandoned; that the defendants in error had in the meantime either themselves, or through others, carried on mining operations thereon, and that they were mining and removing ore therefrom;—by reason of all of which the 99 year lease became terminated and the property reverted to the complainants below.

Had the Pioneer Iron Company been made a party to the suit, its answer to the above claim would at once suggest itself.

FIRST: There is no provision in the 99 year lease, rendering its use and the actual mining and removing of iron ore therefrom, necessary to its continued existence. No provision was made for its forfeiture for non-use.

The right to mine and take ore under this lease was

founded on a grant, and the same is not lost by the failure to exercise it during the term of such grant.

Day v. Waldon, 46 Mich., 576;
Campau v. Iron Co., 49 Mich., 39;
Arnold v. Stephens, 24 Pickering, 106;
Barnes v. Lloyd, 112 Mass., 231;
Owen v. Field, 102 Mass., 114.

In *Day v. Waldon*, 46 Mich., 576 Judge Cooley says on page 583;

> "The right to the easement was not lost by *mere neglect to assert, use and enjoy it for the period of twenty years.* There is no doubt of this on the authorities. * * * The grant was perpetual without conditions, and therefore, the privileges granted would continue indefinitely whether the grantee did or did not avail himself of it. *An accepted grant cannot be waived or abandoned;* and neglect of the grantee could be no more significant on its bearing on his right, than the neglect to enjoy the freehold to which the easement was appurtenant."

In *Arnold v. Stevens*, 24 Pickering, 106, it was held that the right to dig ore in the land of another was not lost by the neglect to exercise that right *for* 40 *years;*—and that *the fact that the owner used and enjoyed the same property in the manner in which he was entitled to use the same, was no invasion or denial of the right to mine.*

SECOND: Even though the assignees or grantees of Reynolds and Harvey *had* conducted mining operations upon this property, and the Pioneer Iron Company *had not mined* thereon, yet this fact creates no equitable right in complainants *to ask the termination of the* 99 *year lease.* No investment was made in ignorance of said lease; and though complainants had developed mines and were mining upon the property, yet they purchased, with full knowledge and notice of the lease. In

many, if not all, of their deeds those leasehold rights were expressly set forth or referred to.

No claim is made that an interference with mining operations of complainants below has been threatened, or that by sustaining the 99 year lease complainants' rights would be lost. On the contrary, *if their contentions are correct, both they and the Pioneer Iron Company had the right to mine upon this property. They,* under the rights expressly conveyed by Reynolds and Harvey; *the Pioneer Iron Company,* under the rights granted by the 99 year lease. And, since the only use which defendants in error claim to have made of such property, *was such as they claim they were entitled to,* even while the 99 year lease was admitted by them to be in force, — it does not lie in their mouths to say that the fact that they have so mined, should preclude the Pioneer Iron Company from also mining.

Arnold v. Stephens, 24 Pickering, 106; 35 Amer. Dec., 305, 311.

No injury has resulted or could result from the failure or delay on the part of the Pioneer Iron Company to mine and take ore from this property. On the contrary, the property is now more valuable and richer,—it contains more ore because of such delay. *No royalty was to be paid;* hence, by reason of the failure and neglect complained of, a positive benefit has resulted to the grantees of both Reynolds and Harvey. How, then, could they acquire equitable rights, leading to the destruction of this valuable estate, *because of delay* under the circumstances here shown?

From the foregoing authorities and the reasons which plainly make them applicable especially to this case, a leasehold granted for the term of 99 years will not be forfeited and lost *simply by non-use.* Those rights would continue and remain intact, *unless it could be established that they were appurtenant to the Negaunee furnace and that such furnace was intentionally and purposely abandoned,*—thus extinguishing the appurtenant privileges.

THIRD: Even though said lease *be found appurtenant to the Negaunee furnace,* the term of the lease not having expired, the question as to whether the Pioneer Iron Company has permanently abandoned said furnace, or whether it proposes to repair and renew the same, — is one which it should have the opportunity to determine. No Court could so construe the lease as to require continued operation of an antiquated and worn out furnace, nor could it be expected that within the term of 99 years the entire plant must continue unchanged. Since the making of this lease, machinery, methods, and business conditions have been completely revolutionized, and the Pioneer Iron Company must meet the conditions as they exist if it would succeed. The adjudication of these questions, against the rights of the Pioneer Iron Company, therefore, appears in the bare statement of the facts, to have been *ex parte* and without a due regard to the rights of this absent corporation or its stockholders.

Fourth.

The fourth ground assigned in the state Courts, for the termination of this lease was; THAT BY REASON OF THE EXPIRATION OF THE CORPORATE EXISTENCE OF THE PIONEER IRON COMPANY IN APRIL, 1887, THE RIGHTS ACQUIRED BY SAID PIONEER IRON COMPANY BECAME TERMINATED, AND BY OPERATION OF LAW REVERTED TO SAID CHARLES T. HARVEY AND HIS GRANTEES, THE COMPLAINANTS IN THIS CASE,—and this, notwithstanding the reorganization and extension of the company under the law of Michigan continuing its property rghts.

> The first important provision of the lease itself is this: "The party of the first part does hereby let and lease and demise to the party of the second part, for the

consideration hereinbefore named, *for the full end and term of 99 years from and after the date hereof,* the lands, etc.."

At that time, by constitutional provision of the State By the terms of the 99 year lease *it was not assignable;* hence, of Michigan the life of a corporation was limited to 30 years. to preserve the rights of the grantees under said lease for *the period of 99 years,* a further provision was required.

Explicit provision was, therefore, made as follows, (Record, page 20):

> "The rights and easements above mentioned *shall descend to the corporate successors of the party of the second part, but not to its assigns."*

In construing the language of this lease the Court should endeavor to harmonize the entire instrument and to *give effect to all its terms and provisions.*

Vary v. Shea, 36 Mich., 388;
Plano v. Ellis, 68 Mich., 101;
Jones v. Pasby, 62 Mich., 614;
Harlow v. Iron Co., 36 Mich., 105.

That clause which provides that "the rights and easements above mentioned shall descend to the corporate successors, etc., etc.," — should be construed, together with the provisions that *"the party of the first part does hereby let and lease and demise to the party of the second part for the consideration hereinbefore named, and for the full end and term of 99 years from and after the date hereof,* the lands etc., etc.," — so as to give force and effect to *both these terms of the lease,* and if possible to keep the lease alive for the full term prescribed.

The language of the lease as drawn and its terms and provisions, were all used for the purpose of giving it effect *for the full term of 99 years,* and passing it after the end of 30 years to a further corporate organization.

To "descend" is to pass from the holder to another.

(9 *American & English Encyclopedia of Law*, 348). It means to pass from the grantee to some other person and not to terminate. "A corporate successor" *of the party of the second part* would necessarily mean one who should succeed or follow; one who takes the place which another has left, and sustains a like part or character. (*Webster's Dictionary*).

The corporation, either reorganized or extended, to carry on and go forward with this enterprise as the grantee proposed to do, would be the *successor of the Pioneer Iron Company;* and that such a successor was meant, appears from the language "to the corporate successor *of the party of the second part.*" (*I Clark & Marshall on Corporations*, Secs. 335-341, A and B; see also language found in *Railway Co. v. Miller*, 114 U. S., 176-187; *Railway Co. v. Pendleton*, 156 U. S., 669, second syllabus, page 673; *Turnpike Co. v. Sanford*, 164 U. S., 567, see opinion.)

Such was the evident intention of the parties. Such a construction gives meaning to all the terms of the instrument, and protects, in an honest manner, the vested property rights which were in express terms granted to the Pioneer Iron Company.

To construe "*the full end and term of 99 years*" to mean less than that term, and to mean but 30 years, would be contrary to equity and honesty,—and would reverse the maxim "*that deeds are to be taken most strongly against the grantors.*" It cannot be said that with the termination of the corporate organization and powers the ownership of this property ceased and terminated. The *real owners*, for whom this ideal person, (the corporation,) was but the trustee, remained, and *had rights*, when the corporate authority ceased. It could make no manner of difference to the fee owners whether the lessees proceeded to exercise their rights under *the original*, or a *reorganized* corporation.

In the case of *Alexander v. Tolleston Club of Chicago*, 110 Illinois, 65, an attempt was made to terminate vested

rights in a case very similar to this. In that case the owners of land leased to a club all their grounds in a certain section, to be used as a canal and right of way, "*for and during the existence of said club.*" The lease contained this clause; "*Whenever said club shall cease to exist as now organized, this lease * * * shall be determined and cease.*" The club as organized was a mere voluntary association. Subsequently it became an incorporated company—the voluntary association going out of existence and reorganizing as a corporation under the name of the "Tolleston Club of Chicago." It was contended by the lessor that the lease was at an end because *it was granted only to the voluntary association which had ceased to exist.* The Court held:

> "That the grant of the right of way, or canal and its appurtenances, did not cease upon the club becoming incorporated under the statute, assuming all debts of the same and taking all its property; and that the words "as now organized," referred to the purpose of organization, — not to the mode of organization."

In the opinion the Court said:

> "It makes no manner of difference with any rights involved in this lease whether the club be a voluntary association or a corporation. It in no way affects the right of way or the burden on the land, and it cannot be supposed that the mere manner of being organized as a voluntary association, or as an incorporated body, was at all in the contemplation of the parties to he lease." Also
>
> "The inequitable character of the claim which is here set up to defeat this lease, because of alleged incapacity of appellee to take it, is, under the facts of the case, apparent, etc."

Just as in the case at bar, it is not the *mere manner of organization* that affects the burden on the land, but rather the purposes for which that organization uses the grant.

This question has been repeatedly before the courts, and existing property rights created by valid contract have never been forfeited simply by the technical expiration of corporate powers, contrary to the intention of the parties, and where the real parties interested could without injustice be protected.

In the case of *Mason v. Pewabic Mining Co.*, 133 U. S., page 50, this Court passed upon and decided such a question.

In *Detroit v. Detroit Citizens St. Ry. Co.*, 184 U. S., 368, see opinion 394-395, rights of similar character were also considered. In both of the foregoing cases grants *extending beyond the term of corporate existence*, were protected and sustained.

Fifth.

The decisions of the Courts of Michigan that property rights of the Pioneer Iron Company and the grant to it have expired, notwithstanding the terms of the lease;—and that said company, although reorganized under the laws of Michigan, could not so continue its existence as to hold said leasehold rights beyond 30 years, was technical indeed; and it must have resulted from the absence of this interested corporation, whose rights were thus at stake.

It is claimed that EVEN THOUGH THE PIONEER IRON COMPANY WAS REORGANIZED UNDER AUTHORITY OF THE CONSTITUTION AND LAWS OF THE STATE OF MICHIGAN, ADOPTED AND PASSED SUBSEQUENT TO THE GRANTING OF THE LEASE; YET IF THE RIGHTS UNDER SAID LEASE APPEARED TO CONTINUE IN THE COMPANY AS SO REORGANIZED, THE LAWS OF MICHIGAN SO ADOPTED WERE IN VIOLATION OF THE CONSTITUTION

OF THE UNITED STATES AND THE FOURTEENTH AMENDMENT THEREOF.

It has been shown that this lease was granted and received for the full end and term of 99 years, and that by its provisions it was made to *descend to the corporate successors of the Pioneer Iron Company.* The evident intention was to make such provision that though the existing corporate organization should expire within 30 years, yet the lease would remain unimpaired and would continue during its term of 99 years.

The effect of the amendment to the constitution and statutes of Michigan so far as it applied to the Pioneer Iron Company is to carry out and make effective the real intention of the parties, by keeping alive this lease which otherwise might have terminated through legal technicality, contrary to the plain terms of the instrument. Such legislation has repeatedly been considered in this Court and has as often been upheld.

Randall v. Kreiger, 23 Wall., 129-137, see 149;
Satterlee v. Mathews, 2nd Pet., 380;
Watson v. Mercer, 8 Pet., 88;
Gross v. Mortgage Co., 108 U. S., 488, 489;
Mortgage Co. v. Gross, 93 Ill., 483.

In the case of *Randall v. Kreiger,* 23 Wall., see page 149, this Court said:

> "To the objection that such laws violate vested rights of property, it has been forcibly answered that there can be no vested right to do wrong. Claims contrary to justice and equity cannot be regarded as of that character. Consent to remedy the wrong is to be presumed. The only right taken away is the right dishonestly to repudiate an honest contract or conveyance, to the injury of the other party. Even where no remedy could be had in the Courts, the vested right is usually unattended with the slightest equity."

Inasmuch, however, as the foregoing claims as to constitutional invalidity were not passed upon by the Courts of Michigan, no further comment thereon is here necessary.

It is evident that no adjudication of any of the foregoing claims set forth as grounds for the termination of the 99 year lease, could have been had without directly involving the rights of the Pioneer Iron Company and its stockholders. The opinions of the Michigan Courts, and the judgment complained of, show that said claims were in fact decided adversely to the Pioneer Iron Company. That this was done in absence of that company is conceded. No conclusion, therefore, can be reached but that should this Court sustain such a decree the property and rights of the Pioneer Iron Company *will have been taken without due process of law.*

Respectfully submitted.

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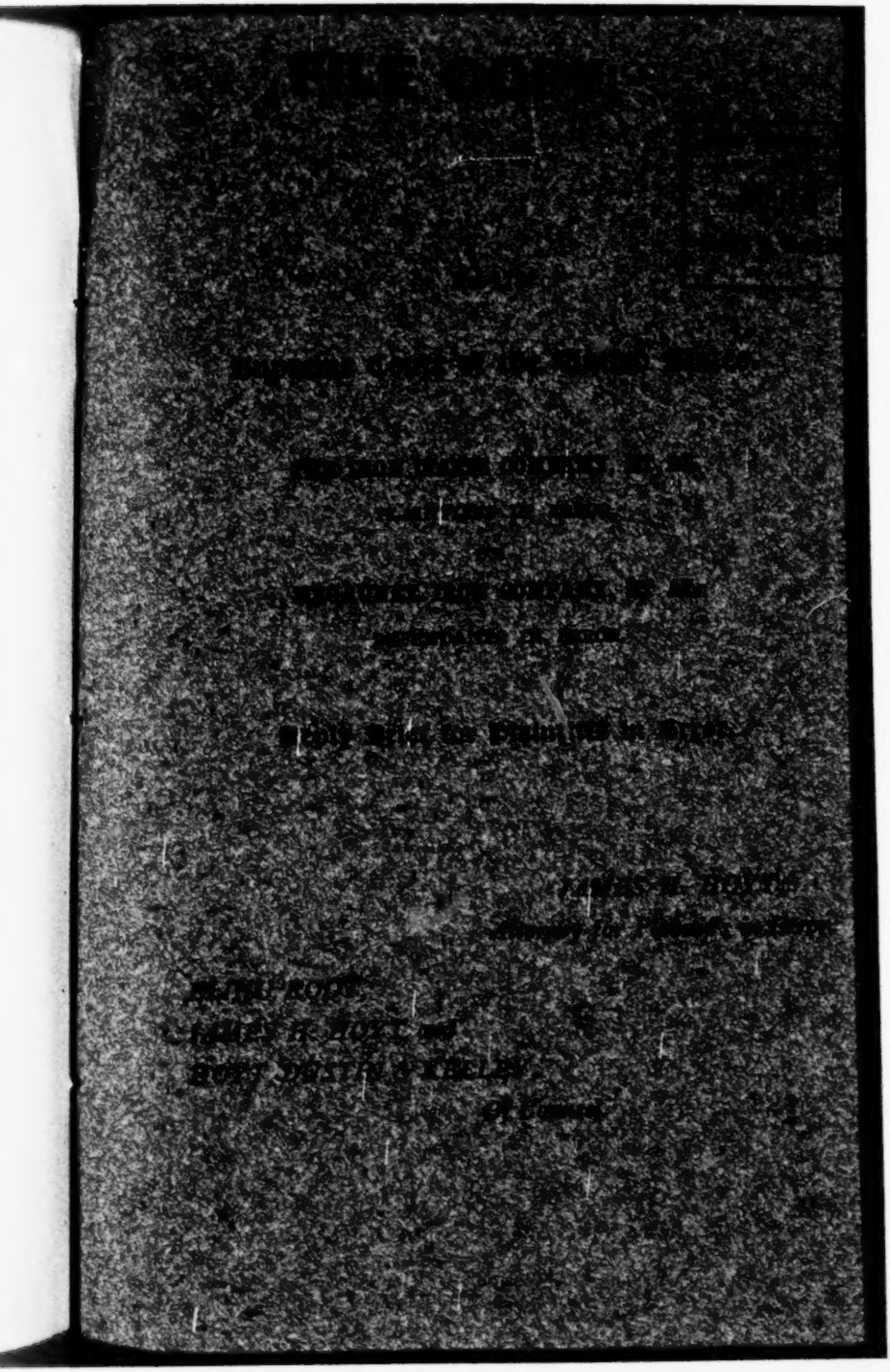

No. 173.

Supreme Court of the United States.

THE IRON CLIFFS COMPANY, ET AL.

PLAINTIFFS IN ERROR,

vs.

NEGAUNEE IRON COMPANY, ET AL.

DEFENDANTS IN ERROR.

Reply Brief for Plaintiffs in Error.

JAMES H. HOYT,
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Of Counsel.

Supreme Court of the United States.

THE IRON CLIFFS COMPANY, THE CLEVELAND-CLIFFS IRON COMPANY, WILLIAM G. MATHER AND MURRAY M. DUNCAN,

PLAINTIFFS IN ERROR,

vs.

NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG AND MARY KAUFMAN,

DEFENDANTS IN ERROR.

Reply Brief for Plaintiffs in Error.

Various inaccuracies of statement, in defendants' brief, both in the application of principles and as to the relation of the facts of this case, make necessary this reply.

So far as defendants in error argue the merits of the federal question which we present, namely; that the property of the Pioneer Iron Company and its stockholders was taken *without due process of law*, they proceed upon theory rather than the plain facts as shown by the record. One of the general ideas running through their brief is found on page 14, where they say:—

> "The averments are of the same character as would be the case were plaintiffs in error charged by the bill with making use of the name of a fictitious person or corporation, which they fraudulently set up as a cover for their acts. In either case the claim is false and fraudulent and may be shown to be false and fraudulent by showing that in the one case the corporation under whom they claim to act is dead, and in the other case the corporation or person is fictitious."

In other words, it is here and throughout the brief suggested that the case may be considered in principle as though defendants below had asserted mere fictitious claims and rights under a mere fictitious name. We deny both the premises and the conclusion of this argument. The complainants below themselves set out the execution and the granting of this valid leasehold to a valid and existing corporation. The leasehold is for 99 years. Its term is not yet half expired. The rights and privileges granted are of immense value.

The lease itself in terms "*descends, — to the corporate successors of the Pioneer Iron Company.*"

Here are actual, substantial property rights, really and actually conveyed to the Pioneer Iron Company and to its successors, but to no other person.

By legal enactment of the State of Michigan and by corporate act of the stockholders the Pioneer Iron Company was extended with all the property and rights previously granted to and owned by that company.

To disregard these vast property rights, — to treat this transaction and this corporation as a fiction, — to proceed by

judicial process, and by judgment to terminate those rights, without the presence of the persons really interested therein, — we claim amounts to the taking of property *without due process of law.* THE ONE GREAT FACT WHICH DEFENDANTS HERE AND BELOW SEEK TO IGNORE, IS THAT THERE WAS A 99 YEAR LEASE ACTUALLY GRANTED, AND THAT IT HAD AN OWNER WHICH WAS NOT BEFORE THE COURT.

Defendants in error further assert that the suit was prosecuted not against the Pioneer Iron Company, or to obtain a forfeiture of said lease as against it, but to prevent the defendants below individually from pretending that the Pioneer Iron Company exists, and from fraudulently mining iron ore for their own benefit under said lease in a manner not authorized or contemplated by the lease itself, — by reason of which they say the Pioneer Iron Company was not a necessary party and that its property remains untouched and unaffected, and that, consequently, the stockholders of that company are not in any manner injured.

An examination of the correctness of these claims illustrates with clearness and with force the merits of our entire position.

The manifest purpose of this suit was by judicial decree to terminate the 99 year lease and the rights appearing to exist thereunder; — not simply to stop some unauthorized act by an unauthorized person.

The bill in explicit terms sets up in full and at length the granting of the lease to the Pioneer Iron Company and the many reasons why the rights thereunder had theretofore terminated and were no longer available as property rights;

that by reason of this termination of the 99 year lease defendants below had no right, in the name or on behalf of the Pioneer Iron Company, to mine for ore acting under said lease.

The whole elaborate case for complainants below, as presented to the Court upon the trial, consisted of an attack—not on the defendants personally, *but on the right of the Pioneer Iron Company and upon the existence of its 99 year leasehold.*

The Decree.

The decree of the Circuit Court of Marquette County, which was affirmed by the Supreme Court and now stands as the judgment in this case, begins on Record, page 556. Its opening sentence is as follows:

> "This cause having come on to be heard upon the bill of complaint, the answer thereto and the replication of complainants to such answer, the proofs in said cause taken in open court and having been argued by counsel for the respective parties, and the Court having duly considered the same and being advised in the premises, doth find, order, adjudge and decree as follows: * * *"

Said decree thereupon proceeds with adjudications of the foundation rights of the Pioneer Iron Company set up in the bill of complaint, but it deals with no other rights; and, except the act of mining, it deals with no other facts than the question of the rights of the Pioneer Iron Company under the 99 year lease. These it finds and adjudges. Except the one fact as to the tempo-

rary trespass complained of, the entire determination of facts, on which in terms the injunction is based, consists in *an adjudication of the rights of the Pioneer Iron Company under the 99 year lease, and a finding of the several reasons why that lease no longer exists.* It is true the Court find that William G. Mather and Murray M. Duncan without legal authority, etc., instigated and directed the trespasses complained of and employed the men who were digging, but this conclusion resulted from the finding that the 99 year lease was terminated, — by reason of which they had no right so to mine.

"*In consideration of the foregoing findings and determinations,*" the perpetual injunction was granted, — as a means of carrying out the decree and to prevent future operations under the 99 year lease which the Court decided had been lost, abandoned and terminated by the Pioneer Iron Company.

The perpetual injunction runs against all the defendants below and against their counselors, attorneys, solicitors and agents, and then follows the language "whether acting in their individual or representative capacity."

The words "*representative capacity*" were not used to cover defendants below as representing each other, or in a general sense, or as individuals might represent the two corporate defendants, for it was not found that either the Cleveland-Cliffs Iron Company or the Iron Cliffs Company had done or threatened any wrongful act or trespass; — and in any event each of these parties was personally enjoined.

These terms were used to enjoin the defendants from acting for and setting up rights of the person whom complainants alleged they were wrongfully claiming to *represent,*

— and whom the defendants had claimed and pleaded that they in fact represented, namely, the Pioneer Iron Company. The very marrow and gist of complainants' case had been a denial of the right of defendants below to represent the Pioneer Iron Company.

When the injunction is read in the light of "*the foregoing findings and determinations of the Court concerning the particular matters in complainants' bill of complaint*," — on which said injunction is based, — and in the light of the claims of defendants below that they acted only as the officers and agents of the Pioneer Iron Company in asserting its right to mine under the 99 year lease, — there can be no difficulty in determining that the words "representative capacity" meant and were intended to mean *as representatives of the Pioneer Iron Company*.

The scope and purpose of this decree is plain and the *use* to be made of it is obvious. There can be no doubt that it cuts off the 99 year lease and perpetually enjoins the assertion of all rights under it by the officers of the Pioneer Iron Company.

The form in which the orders and judgments were made is of little consequence in the determination of the fact as to whether or not *due process of law* was had in this case. It is plainly evident that the Pioneer Iron Company, the grantee and the only person who was ever interested as the owner of the leasehold, was not before the court. There can be no doubt that, but for the claimed acts and defaults on which forfeiture was predicated in the bill of complaint, the 99 year lease had not expired. It is therefore evident on the face of things that should the Court find the effect of this judgment to be, as it is claimed by the plaintiffs in error, a

determination of the rights granted under this lease, — the Pioneer Iron Company has been deprived of property without being heard, and this regardless of the course pursued in reaching the end attained.

In our main brief we have broadly discussed these propositions, and have shown that neither the Pioneer Iron Company nor its stockholders have been or could have been heard in this case in defence of their property.

Due Process of Law.

Defendants in their last brief, (page 37), cite numerous authorities and decisions of this Court sustaining the general principle that " due process of law " is had when the party to be affected by a litigation has been brought into Court and afforded an adequate opportunity to defend his rights or property.

We do not question or deny, but, on the contrary, we assert the correctness of this principle.

The stockholders of the Pioneer Iron Company were permitted no defence of their corporate property which was taken. While the Iron Cliffs Company and William G. Mather were personally made parties to the suit, yet in determining whether they were afforded an opportunity to defend their corporate property rights, — *this Court should be governed by real and not pretended things.* As said in *Simon v. Craft,* 182 U. S., 427, see 436:

> " In determining whether such rights were denied, we are governed by the substance of things and not by mere form."

Even though personally made parties, the plaintiffs in error had no power to represent or defend the Pioneer Iron Company or through it their property as its stockholders.

The question as to whether the owner of this vast property should or should not be made a party to this suit, with the right to be heard before its property rights were cut off, is not dependent upon the rules or discretion of the state court, — or upon the opinions of a Chancellor, — "it rests upon a much broader ground, which must equally apply to all courts of equity, whatever be their structure as to jurisdiction; it rests upon the ground that no court can adjudicate directly upon a person's rights without the party being either actually or constructively before the court."

Mallow v. Hinde, 12 Wheaton, 193, see 198;
Shields v. Barrow, 17 Howard, 130, see 141;
Taylor v. Southern Pacific Co., 122 Fed. Rep., 147, see 152.

The case of *Elmendorfer vs. Taylor,* 10 Wheaton 152 see 166-7, cited by defendants in error in their brief, page 47, is illustrative of the entire principle contended for, namely;— that the bringing in of certain classes of parties defendant — lies within the discretion of the Court. That case, *Elmendorfer vs. Taylor, supra.,* is explained and thoroughly distinguished in the subsequent case of *Mallow vs. Hinde,* 12 Wheaton 193, see 198, and also in the later cases cited in our main brief.

None of the other authorities cited by defendants upon this proposition are in point in a case like this.

Jurisdiction — Federal Question.

It is further claimed by defendants in error that no federal question exists for the consideration of this Court for the following reasons:

FIRST. They assert that it does not appear that the Iron Cliffs Company itself set up and claimed the federal question here asserted and relied on, and that the answer for it by William G. Mather is not sufficient (defendants' brief, pages 17, 29 and 30).

SECOND. That William G. Mather was the only person who set up and claimed the federal question here being presented and the record does not show said Mather to be a stockholder of the Pioneer Iron Company; but, on the contrary, that the Michigan Courts found against his ownership of stock in said company, (defendants' brief, page 17-35).

THIRD. That before the Court can find the existence of a federal question, it must first be found that the reorganization of the Pioneer Iron Company was in fact regular and valid so that it would own the 99 year lease.

We have heretofore in our main brief largely considered these questions; but directly answering defendants' present claims, we have to say that the federal question now and here claimed was undoubtedly asserted in behalf of both the Iron Cliffs Company and William G. Mather in the state courts.

(a) During the trial in the Circuit Court this question directly arose and these rights were claimed by counsel in behalf of defendants who were stockholders in the Pioneer Iron Company.

(b) The amended answer filed by William G. Mather avers the holding by him of the stock of the Pioneer Iron Company in two capacities, (1) individually, (2) as trustee, and this constitutional claim was set up in behalf of the real owners of this entire stock.

(c) The proof showed without dispute the extent of both these holdings and that Mr. Mather held 10 shares individually and the balance *as trustee for the Iron Cliffs Company.* No attempt was made to dispute this ownership and holding of stock, but, on the contrary, all parties assumed it to be correct and complainants by their counsel asserted that by reason of this ownership by William G. Mather and the Iron Cliffs Company the doctrine of representation applied, and hence that the Pioneer Iron Company need not be made a party to the suit.

The trial court in its opinion, (Record page 555), said:

> "They (complainants' counsel) also contend that the Pioneer Iron Company would be bound by the decree without making it a party, for the reason that the defendant, Wm. G. Mather, was the president of the company, and the holder of a large majority of its stock, as trustee for the defendant, the Iron Cliffs Company, at the time of filing the bill, and that, therefore, the company would be bound, although not a formal party to the suit."

The court then proceeds:

> "This doctrine, tersely stated, is to the effect that where it appears that a particular party, though not before the court in person, is so far *represented by others who are* before the court that his interests receive actual and efficient protection, his actual

joinder may be dispensed with and the decree may be allowed to be binding upon him. 15 *Ency. Pl. & Pr.*, 527, 628, and cases cited."

No doubt can lodge in the mind of any fair person but that these rights were asserted and were understood to be asserted for *both these stockholders* in the trial court. They were also asserted and claimed in the Supreme Court.

The same amendment to the answer setting up these constitutional rights in behalf of these two stockholders was filed in and considered by the Supreme Court. That court in its opinion on page 569 discusses the claims so made on behalf *of stockholders.* It will be observed that there are no distinctions drawn and no direct holdings on the ownership of stock. The court say "the defendants own and have owned for many years all its capital stock, etc."

The only defendants who averred ownership in the pleading which was being considered were William G. Mather and the Iron Cliffs Company. When it is remembered that the Supreme Court did not refuse to consider this claimed right, but, on the contrary, passed upon this constitutional question, it must be perfectly evident that the court found that the same was raised by stockholders; and even though it had distinguished between the holdings of the Iron Cliffs Company and William G. Mather, *yet the question is raised for both of them*, and the court was advised of and considered the claims then and now asserted, with full knowledge of the position which was taken by these stockholders. It will be observed that the Supreme Court not only considered the claims of the stockholders on this subject, *but also considered the claims of complainants' counsel.* — namely, that Wm. G. Mather and the Iron Cliffs Company be-

ing stockholders in the Pioneer Iron Company, the doctrine of representation applied, and that the judgment would be binding against that company although it was not a party to the suit. We know this from the authorities cited by the Court in its opinion (Record, page 569.) They are the following:

15 *Ency. Pl. & Pr.* 627;
Hale v. Hale, 146 Ill., 227; 33 N. E. 858, 20 L. R. A., 247.

This Court has plainly held, in *Land & Cattle Co. v. Frank,* 148 U. S., 603, see 610, that the doctrine of representation cannot apply to a case of this kind, where an attack is made upon the rights of a corporation, but that where a corporation is the person to be affected, it is not sufficient that its stockholders are made parties to the suit. Yet the holding and opinion of the Supreme Court of Michigan upon this question is, nevertheless, important in that it removes all doubt as to the fact that the court found the question to have been raised by stockholders.

Inasmuch, therefore, as William G. Mather and the Iron Cliffs Company were the parties who set up and claimed by pleading and otherwise this question, it is evident that the Court assumed and found their claimed ownership of stock as asserted by them.

———o———

The claim is made by defendants in error on page 17 of their general brief, that in order to be heard in this Court upon a federal question, the party claiming it must show that he raised that question in the state court, — and that it will not aid him to show that some one else has raised it in the

state court, while he failed to raise it. This is correct as the statement of a general principle, — where parties are not united in interest and have proceeded separately.

But how does that principle apply to this case? All the stock of both these stockholders was held in the name of William G. Mather. Both of them intended to assert this constitutional question. It was set up and claimed *for them,* in an answer filed by Mr. Mather, who held the stock. It was also asserted and claimed by both brief and argument of counsel. The parties on both sides were fully advised of these facts, and the state courts *acted on these claimed constitutional rights,* with a knowledge of the entire situation. What further or more explicit claim should have been made? Should technicality in form of statement be invoked to defeat this constitutional right?

This Court has held in *Dewey v. Des Moines,* 173 U. S., opinion 199, that no particular form of words is necessary to be used in order that the federal question may be said to be involved.

In the case of *Roby v. Colehour,* 146 U. S., 153, see 159-160, this Court refused so technically to construe pleadings as to defeat the constitutional right, where the intention to assert the claim was evident.

In *Land and Water Co. v. San Jose Ranch Co.,* 189 U. S., 177, see 180, it was held that the federal question is sufficiently set up and claimed, if such federal question was fully considered in the opinion of the state court, and ruled upon against the plaintiffs in error.

Thus repeatedly has this Court refused to apply tech-

nical considerations to the *form* or *manner* of claiming a constitutional right, where the intention to assert that right is apparent from the entire record.

Reorganization of Pioneer Iron Company.

Answering the third of defendants' claims above referred to, namely; that before this Court can find the existence of a federal question it must first determine that the Pioneer Iron Company was regularly reorganized, — we have simply to call attention to the few previously considered facts. The 99 year lease itself was so drawn as to grant to the Pioneer Iron Company the rights and privileges there conveyed "*for the full end and term of 99 years from and after the date hereof;* and it also provided that the rights and easements above mentioned "*shall descend to the corporate successors of the party of the second part.*" The lease was not to terminate at the end of 30 years, but was to continue and to *descend.* The continued existence of the rights granted was not conditioned upon the happening of some event or the continuation of any condition. They were continuing, vested, property rights. The 99 year lease then was available to and would continue in the Pioneer Iron Company when reorganized and extended.

In our main brief we have shown that by the law of Michigan provision was made for extending by reorganization the corporate existence of the Pioneer Iron Company. The record shows that the stockholders acting under that law reorganized and extended the company.

Even assuming that because of any informality or

technical defect the acts of the stockholders were in some respects irregular, yet the State of Michigan has never questioned or in any way objected to the exercise of the corporate powers of this company by reason thereof. These defendants can not be heard to raise such a question.

Potter v. Street Ry. Co., 83 Mich., 285.

The general law of Michigan makes provision for just this sort of irregularity. Section 6996 of the laws of Michigan pertaining to mining and iron manufacturing companies reads as follows:

> "Neither the organization of any corporation formed under the general mining and manufacturing laws of this state, or which may hereafter be organized under this act, nor any corporate act, shall be deemed invalid by reason of any omission in its articles of association, irregularity in filing them, or insufficiency of notice of meeting, unless such omission, irregularity, or insufficient notice shall have been fraudulently intended; and the stockholders may at any meeting regularly called, by a vote of a majority of the stock, supply the omission in its articles, direct them to be properly filed, or ratify and confirm the action taken at a meeting insufficiently noticed, and upon this being done all the acts and proceedings of said corporation shall have the same force and effect as though said omission, irregularity, or insufficiency had not existed."

The statutes of Michigan, Section 6997, also provide:

> "The articles of association so filed, the record thereof, or copies of such articles certified by the secretary of state or county clerk, *shall be prima facie*

evidence in all courts and proceedings of the organization of such corporation."

It thus appears from the statutes of Michigan that no mere irregularity or omission can be complained of in such a collateral proceeding as this, and further that the production of the certified copy of the records of the Secretary of State is made the prima facie evidence of the corporate organization and existence of the company.

No attempt was made to dispute the facts shown by the certified copies of the records of the Secretary of State offered in evidence in this case, nor that said Pioneer Iron Company was reorganized. On the contrary, the courts of Michigan in terms recognized the fact that the reorganization steps had been taken as shown, and declined to disturb the corporate existence.

There being no finding and determination of the courts of Michigan against the validity of the corporate reorganization of the Pioneer Iron Company, this Court may, and in the interest of justice should, examine the entire record for the purpose not only of finding whether the Iron Cliffs Company and William G. Mather were stockholders of the Pioneer Iron Company, but also to determine whether or not it should have been a party.

Blake v. McClung, 172 U. S. 239, see 246;
Sully v. National Bank, 178 U. S. 290, see 298.

In the latter case one Carhart set up certain constitutional rights growing out of the fact of discrimination between citizens of the State of Tennessee and those of the State of New York, Carhart claiming to be a citizen of the State of New York. It was claimed by parties opposing Carhart's position that:

"It does not appear that he is a citizen of another State than Tennessee, and hence cannot avail himself of the fact of such citizenship in order to claim that his rights as such citizen have been infringed within the meaning of section 2 of article IV of the Constitution, declaring that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several states. We think the objection untenable.

"In his original bill to foreclose the mortgage security the eighty-five thousand dollars of bonds held by him, he described himself as a resident of the State of New York, and in the petition of Mrs. Myton and Mr. Carhart, filed October 11, 1895, in the two cases against the land company, Mrs. Myton is described as a resident of the State of New York, and A. B. Carhart is described as a resident of the City of Brooklyn. No question seems to have been made throughout the litigation as to the citizenship of those parties. The question does not seem to have arisen in any stage of the case up to the argument in this court. Although there may be some slight difference in the facts between this case and those which are stated in *Blake v. McClung, supra*, at page 246, we yet think that Carhart brings himself within the principle decided in that case, and that his citizenship in the State of New York should be regarded as sufficiently proved."

With the records of the corporate reorganization and existence of the Pioneer Iron Company undisputed before the court, what further burden rests upon the stockholders of that company, and how can the defendants be heard now collaterally to deny the existence of this corporation or to assert that it should not be heard before its property was taken?

It appears, therefore, that by the terms of the lease, which was the subject-matter of the attack below, the rights there conveyed passed to the corporate successor of the Pioneer Iron Company by the very words of the instrument; and that under the law of Michigan the Pioneer Iron Company was extended with express power to hold and continue to own its property. The existence of this company can not be ignored, and before its rights were passed upon it should have been afforded an opportunity to be heard.

The above considerations fully answer the suggestion that complainants below might assume or, in absence of the Pioneer Iron Company, prove that it "*was a dead corporation*," or that it was "*used as a dummy*," or that its "*stock was owned by other persons and corporations for their benefit*," or any other fact which might affect the property rights of the Pioneer Iron company and its stockholders, in this lease.

We claim that upon any and all of such issues the grantee of this 99 year lease had the right to be heard before its property was taken; and that it, in common with all citizens, should have been accorded the ordinary protection placed around their property.

Respectfully submitted,

JAMES H. HOYT,
Attorney for Plaintiffs in Error.

ELIHU ROOT,
JAMES H. HOYT and
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Of Counsel.

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JAMES H. McKINEY,
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Supreme Court of the United States.

OCTOBER TERM, 1904.

No. 173.

THE IRON CLIFFS COMPANY.
THE CLEVELAND CLIFFS IRON COMPANY,
WILLIAM G. MATHER and
MURRAY M. DUNCAN,
Plaintiffs in Error.

vs.

NEGAUNEE IRON COMPANY,
EDWARD N. BREITUNG and
MARY KAUFMAN,
Defendants in Error.

BRIEF IN BEHALF OF DEFENDANTS IN ERROR.

BENTON HANCHETT,
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BRIEF IN BEHALF OF DEFENDANTS IN ERROR.

I.

The Writ of Error should be dismissed for want of jurisdiction.

The record shows that a question which is not a Federal question was presented in the case and was decided by the

Supreme Court of Michigan against the Plaintiffs in Error. The decision of such question is the basis of the judgment of the Court and is sufficient to sustain the judgment.

It is settled law that in such case this Court will not review the judgment of the State Court.

Eustis vs. Bolles, 150 U. S., 361, at 370.
Harrison vs. Morton, 171 U. S., 38, at 47.
Pierce vs. Somerset Railway, 171 U. S., 641.
White vs. Leovy, 174 U. S., 91, 96.
Remington Paper Co. vs. Watson, 173 U. S., 443.
McQuade vs. Trenton, 172 U. S., 636, *639*.
Chappell Chemical Co. vs. Sulphur Mines Co., 172 U. S., 465, *471*.
Capital Bank vs. Cadiz Bank, 172, U. S., 425, *430*.

The non-Federal question upon which the judgment of the State Court was rendered is this:

The Defendants in Error, who were complainants in the suit, claim to be the owners of the lands in controversy, upon which lands a lease, dated September 17, 1857, had been made for the term of ninety-nine years, by Charles T. Harvey, a prior owner, to the Pioneer Iron Company, a corporation organized for the term of thirty years, of the specific personal right to the Pioneer Iron Company, exclusively, to mine and remove from such lands such iron ore, and such only, as it, the Pioneer Iron Company, should actually convert into merchantable iron in its own furnaces or forges which were then in process of construction.

The defendants in error claim that after March 10th, 1866, the Pioneer Iron Company had not mined nor attempted to mine ore from the lands, had ceased to do any business for which it was organized, the furnaces and forges of the company, to which the mining under the lease was made appurtenant,

were not after that date operated by that company, and had been dismantled and destroyed, and no longer existed, and that the charter of the Pioneer Iron Company expired on April 2nd, 1887, and that the company had ceased to exist.

The defendants in error further claim that the defendants in the suit (Plaintiffs in Error) fraudulently combined and planned to obtain for themselves the ore from said lands under said lease by making use of said Pioneer Iron Company as a dummy, using its name as a cover under which they seek to carry on the work of mining and removing ore under the lease, and are engaged in carrying out such scheme. The suit is to enjoin them from such acts.

The Court found that the defendants in error were owners of the lands, that the right to mine ore under the lease was limited to the Pioneer Iron Company, and was made appurtenant to its furnaces and forges existing at the date of the lease; that it had ceased to mine ore many years ago and its furnaces and forges had been destroyed in 1894, and had ceased to exist, and that the defendants in the suit (the plaintiffs in error) were making use of the Pioneer Iron Company as a dummy, and under the cover of its name were seeking to mine ore for their own benefit from the lands, and by the judgment of the Court they were enjoined from such acts.

The Federal question which is claimed by the plaintiffs in error (defendants in the suit) is this solely:

The defendant, William G. Mather, by his amended answer in the suit set up the claim that he owned stock in the Pioneer Iron Company, and if any decree should be rendered in the case in any way declaring a forfeiture or termination or expiration of the lease, or in any way affecting the rights of the Pioneer Iron Company thereunder, said Pioneer Iron Company not being made a party to the suit, he, as such stockholder, and said Pioneer Iron Company, would thereby be

deprived of his and its property without due process of law.

The Federal question was thus made to depend upon the fact that William G. Mather was at the time the suit was instituted, the owner of stock in the said Pioneer Iron Company and being such owner the Pioneer Iron Company should be made a party to the suit.

In reference to this claim the decision of the Court is that the defendants in the suit, the Iron Cliffs Company and the Cleveland Cliffs Iron Company *owned all the stock of the Pioneer Iron Company*, in this manner deciding against the claim of Mather as an owner of stock in that company.

The Court decided that the Pioneer Iron Company had expired by the limitation of its charter, and that the burden of proof was upon the defendants in the suit to show a valid reorganization so as to make it the successor of the Pioneer Iron Company within the terms of the lease, but the Court did not find or decide that such reorganization had been made, holding it unnecessary to consider the question of the defendant's claim of the company's reorganization.

The Court did not decide or declare any forfeiture termination or expiration of the lease *as to the Pioneer Iron Company*, nor in any way prejudice that company in asserting its rights under the lease, either by a suit, or by acts of mining under the lease, nor did the Court decide any question affecting the rights of William G. Mather as a stockholder of the Pioneer Iron Company.

The judgment of the Court was only that *Mather and the other defendants in the suit had no right under the lease to mine ore from the lands, and enjoined them from such mining*.

The Pioneer Iron Company is left free to assert any rights it may have under the lease.

The Court distinctly stated: "The main purpose of the Bill is not to declare a forfeiture of the lease, but to determine the rights of the parties, which depend largely upon the construction of the deeds, the leases, and the various acts and conduct of the parties, extending over a period of more than forty years, and to enjoin a continuing trespass."

Assuming William G. Mather to be a stockholder in the Pioneer Iron Company, and that the company is still in existence, if in fact he, for his own benefit and for his own purposes, but using the name of the Pioneer Iron Company as a cover for his acts, mined ore to be sold to other parties, or to be used in his own furnaces, would the suit against him alone, to enjoin him from such acts, if sustained, deprive him of his property without due process of law, because the Pioneer Iron Company was not made a party to the suit?

It is submitted that there is no ground to contend that the judgment against him enjoining his acts in such case would involve a Federal question, but that is the precise case upon this record in respect to Mather, if in fact he was the owner of stock in the Pioneer Iron Company, and the company had been reorganized and its existence continued.

First. The case presented by the Bill of Complaint and the Answers.

The case stated by the Bill of Complaint is as follows: The lands in question, described in Exhibit "C" of the Bill, (Rec. p. 18) were originally owned by James L. Reynolds, who conveyed them to Charles T. Harvey by a deed dated February 26th, 1857, which includes as a part of the deed a contract executed by Reynolds and Harvey mentioned and marked "A" in the deed, which deed, with the contract, is Exhibit "A" of the Bill of Complaint.

(R. pp. 13 to 15.)

After the execution of said deed Harvey and two associates, organized under the laws of Michigan the Pioneer Iron Company, a corporation, for the period of thirty years, by Articles of Association, dated April 2nd, 1857, which articles are Exhibit "B" of the Bill of Complaint.
(R. p. 16.)

On September 17th, 1857, Harvey executed to the Pioneer Iron Company a lease of certain specified mining rights in said lands for the term of ninety-nine years from said date, which lease is said Exhibit "C" of the Bill of Complaint.
(R. p. 18.)

The lease provides that the lands were leased to the Pioneer Iron Company "for the sole purpose of mining and quarrying at its own expense such ores and marble as may be found thereon, and subject to the provisions hereinafter mentioned, viz:

"Provided, It shall not quarry, mine or remove any ores on said lands except such as *it shall actually convert into merchantable iron in its own furnaces, or forges*, and provided further it shall not in such mining or quarrying operations use or injure any of the improvements which may be placed upon said lands by other persons without paying just and equitable damages therefor, nor shall it occupy in such operations more land than is absolutely necessary to open and work successfully such mines of iron or marble as may be discovered. And it shall purchase and pay at the rate of twelve (12) dollars per acre for unimproved lands which it may require for such purposes. *The rights and easements above mentioned shall descend to the corporate successors of the party of the second part, but not to its assigns.*"

The complainants have acquired all of the title and rights of Reynolds and of Harvey in said lands.

(Rec. p. 5.)

The Pioneer Iron Company erected two stacks or furnaces at Negaunee, in Marquette County, and carried on business until January 1st, 1866, when it ceased to do business *and has never since that time mined or operated under said lease*, but on the contrary from that date abandoned said lease; on the 10th day of March, 1866, the Pioneer Iron Company leased for the period of ten years to the Iron Cliffs Company, a corporation organized under the laws of Michigan, its entire real and personal estate, situated in Marquette County, consisting of its iron works, buildings, lands and rights, subject to certain limitations contained in the lease, and since the making of said lease the Pioneer Iron Company has made no reports to the Secretary of State or to the Clerk of Marquette County, as required by Sections 4005 and 4107 of Howell's Statutes of Michigan, or any report whatever, and that at some time prior to January 1st, 1873, the Iron Cliffs Company became the owner of all the capital stock of the Pioneer Iron Company, and said stock has since that time been held in the names of different individuals for the uses and purposes of the Iron Cliffs Company, and the certificates of stock representing said capital stock of said Pioneer Iron Company have been and are now held in the names of different individuals who are officers, directors, stockholders, agents or servants of the said Iron Cliffs Company, and of the Cleveland Cliffs Iron Company, a corporation organized under the laws of West Verginia, doing business at Negaunee, which two corporations have been operating together in the conduct of their business, and whose officers and agents are in the main the same persons, *and that said stock is held for the uses and benefit of said Iron Cliffs Company and Cleveland Cliffs Iron Co.;* the Cleveland Cliffs

Iron Company claims to have some interest in the property owned or lately owned by said Iron Cliffs Company, and have in some way succeeded to its rights and said Iron Cliffs Company claims some interest in the rights granted in said lease to said Pioneer Iron Company.

The corporate existence of the Pioneer Iron Company expired on April 2nd, 1887, by the limitation of its charter, and became and was thereby dissolved and ceased to exist, and whatever rights said Pioneer Company held under said lease were terminated and extinguished, and such rights reverted to Charles T. Harvey and his grantees.

After the 10th of March, 1866, the furnaces and forges of the Pioneer Iron Company, in which, by the terms of said lease of September 17th, 1857, it was contemplated that the ore referred to in said lease should be manufactured into iron, were never operated by the Pioneer Iron Company, but were operated by the Iron Cliffs Company and its lessees for a number of years thereafter, and the said furnaces and forges were entirely dismantled and destroyed many years ago, and no longer exist and from the 10th of March, 1866, the Pioneer Iron Company ceased to carry on its business for which it was organized, and has never since been engaged in nor carried on any of the business contemplated by its articles of Association.

Recently, and within the past year, the Iron Cliffs Company and the Cleveland Cliffs Iron Company have fraudulently planned to obtain ore from said lands, and falsely and fraudulently pretend that the Pioneer Iron Company still exists and holds said lands, and have made use of the name of the Pioneer Iron Company as a cover under which and by means of which they seek to carry on the work of mining and removing ore from said lands.

The officers and agents of the Iron Cliffs Company and the Cleveland Cliffs Iron Company who are engaged in said scheme and plan to defraud the complainants are William G. Mather, who is president of the Iron Cliffs Company and Cleveland Cliffs Iron Company, and Murray M. Duncan, who is manager and agent of said companies.

The said Iron Cliffs Company, Cleveland Cliffs Iron Company, Mather and Duncan have entered upon the lands *and are engaged in carrying out said plan and scheme*, and are sinking test pits and exploring the lands for iron ore and are preparing to mine and remove ore therefrom, and the Bill charges that they will continue to carry on the work of exploring, mining and removing ore from said lands unless restrained by the Court; the lands are mineral lands and have large deposits of iron ore, and their chief value consists in the iron ore situated therein, and the mining and removing of iron ore therefrom by the defendants would take from said lands their principal value, and would be an irreparable injury to the complainants.

(Rec. pp. 5 to 9.)

The complainants are in possession of the lands.

(Rec. p. 5.)

The claim of the defendants constitutes a cloud upon the complainant's title.

(Rec. p. 10.)

The Bill of Complaint was filed March 3rd, 1900. The appearance of the defendants in the suit, (the plaintiffs in error,) was entered March 12th, 1900.

THE ANSWERS.

Murray M. Duncan filed a separate answer. (Rec. p. 30.) William G. Mather, the Iron Cliffs Company, and the Cleveland Cliffs Iron Company united in the same answer. (Rec. p. 40.)

No Federal question was presented in the original answers.

On June 22nd, 1901, William G. Mather amended the answer filed by himself, the Iron Cliffs Company and the Cleveland Cliffs Iron Company, by adding the following paragraph (Rec. p. 52.):

"And this defendant, William G. Mather, answering for himself, says he owns in his own right and as trustee 3940 shares of stock of said company (The Pioneer Iron Company) and that if any decree be rendered in this case by the Court in any way declaring a forfeiture or termination or expiration of said ninety-nine year lease, or in any way affecting the rights of the Pioneer Iron Company thereunder, that said Pioneer Iron Company not being made a party to this proceeding, he as such stockholder and said Pioneer Iron Company would thereby be deprived of his and its property without due process of law in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States which forbids any State to deprive any person of life liberty or property without due process of law, and this defendant avers that any decision or findings of the Court in any way limiting, terminating, changing, modifying, annulling or diminishing the value of any of the rights of the Pioneer Iron Company under said ninety-nine year lease and as expressed therein would be void and of no effect under said provision of said amendment to the Constitution of the United States."

In no other way is any Federal question presented by the answers of either of the parties made defendant, or is in any way raised in the record on the part of said defendants.

Mather alone can raise the Federal question in this Court which is presented by his answer.

Sully vs. National Bank, 178 U. S., 289, at 297.

In order that there be before this Court the Federal question raised by the answer of William G. Mather it is necessary that it should appear by the record that *when the suit was begun* Mather owned the capital stock of the Pioneer Iron Company as alleged in his answer, and that being such owner the Supreme Court, by its decree, declared a forfeiture, termination, or expiration of said ninety-nine year lease, or in some way affected the rights of the Pioneer Iron Company thereunder, or the rights of said Mather as a stockholder in that company, *and thereby deprived said Mather of his property in said stock.*

Second. The case presented by the evidence.

The evidence in the case shows that *at the time the suit was begun the whole of the capital stock of the Pioneer Iron Company was owned by the Iron Cliffs Company, and that the whole of the capital stock of the Iron Cliffs Company was owned by the Cleveland Cliffs Iron Company*, and in this manner those two companies owned the whole of the capital stock of the Pioneer Iron Company. The defendant Mather did not own any of the stock of that company.

The Supreme Court of Michigan so found the evidence to be, and found that the Pioneer Iron Company was used as a "dummy" and its name employed as a cover for the benefit of the Iron Cliffs Company and the Cleveland Cliffs Iron Com-

pany under which they sought to mine ore from the lands under said lease.

The following facts are shown by the evidence:

1st. The incorporation of the Pioneer Iron Company on April 2nd, 1857, for the term of thirty years.

(Rec. p. 16. Exhibit "B.")

2nd. The lease from Charles T. Harvey to the Pioneer Iron Company of the right to mine ore exculsively for its own furnaces from the lands in question.

(Rec. p. 18. Exhibit "C.")

3d. The conveyances by which the title to the lands was acquired by the defendants in error.

(Rec. pp. 61 to 77.)

4th. The incorporation of the Iron Cliffs Company, on September 4th, 1864.

(Rec. pp. 514, 515.)

5th. The lease made by the Pioneer Iron Company to the Iron Cliffs Company on March 10th, 1866, for the period of ten years, of the Pioneer Iron Company's entire real and personal property, consisting of its iron works, buildings, lands and rights, reserving to the Pioneer Iron Company the right to sell or lease farming lands, etc.

(Rec. p. 78.)

6th. The Pioneer Iron Company never operated its furnaces, or did any mining thereafter.

(Rec. pp. 120, 121, 123, 124, 494, to 499, 503.)

7th. The furnaces and forges of the Pioneer Iron Company were dismantled and destroyed by the Iron Cliffs Company in 1894.

(Rec. pp. 108, 130, 498.)

8th. The Iron Cliffs Company procured to be passed an Act of the Legislature of Michigan, approved March 26th, 1867, authorizing the Iron Cliffs Company to acquire and hold stock in any company formed for manufacturing pig iron, wrought iron or steel.

(Defendants' Exhibit 75, Rec. p. 406.)

9th. September 10th, 1874, the Iron Cliffs Company executed a mortage in trust, to Edmund H. Miller and Abram S. Hewitt, to secure the payment of the bonds of the Iron Cliffs Company, which mortgage recited the above mentioned Act approved March 26th, 1867, authorizing the Iron Cliffs Company to acquire and hold stock in other companies, and reciting that the Iron Cliffs Company "has also become the owner of certain stock in other companies hereinafter mentioned," and mortgaged certain real estate described, and "*all the right, title and interest of the said party of the first part, to and concerning the capital stock of the Pioneer Iron Company*, and the capital stock of the Excelsior Iron Company, both being corporations of the said State of Michigan."

(Rec. pp. 286, 287, 291.)

The mortgage authorizes *the sale at public auction of the shares of stock of the Pioneer Iron Company in case of default in the conditions of the mortgage*, and authorizes the mortgagees, trustees, to make good conveyances to the purchasers at such sale, and also authorizes the trustees to bid at the sale.

(Rec. pp. 291, 292.)

10th. The charter of the Pioneer Iron Company expired April 2nd, 1887, by limitation of the term of its existence by its Articles of Association.

(Rec. pp. 16, 17. Exhibit "B.")

11th. Pretended proceedings were taken to reorganize the Pioneer Iron Company, by articles of reorganization adopted October 7th, 1889, filed in the office of the Secretary of State.

April 8th 1890. (Rec. Ex. "E" 2 pp. 295, 300.) in which articles *the names of the stockholders of the entire stock of the Pioneer Iron Company, and the number of shares held by each are stated as follows*:

(Rec. pp. 297, 298):

Name.	Residence.	No. of Shares.
"John H. Abeel	New York City	10
C. J. Canda	New York City	20
H. Groenemeyer	New York City	10
George M. Miller	Montmoor, N. Y.	10
Alexander Maitland	Negaunee, Mich.	10
Frederick Hudson	New York City	10
Abram S. Hewitt, surviving Trustee	New York City	4,930
Total		5,000 shares."

These proceedings say (Rec. p. 299): "The secretary having examined the books reported that every share of stock, namely five thousand, was represented either in the person of the owner or by his proxy."

It appears by this record that William G. Mather was not the owner of any stock in the Pioneer Iron Company.

At the meeting there were present of those who purported to be stockholders only the Secretary, H. Groenemeyer, and Alexander Maitland, who acted as chairman.

(Rec. pp. 278, 299.)

C. J. Canda, one of the above named stockholders called as a witness by the complainants in the suit, referring to the above proceedings for reorganization says (Rec. p. 475): "In October 1889, I was a director of the Iron Cliffs Company and the Pioneer Iron Company. I was secretary and treasurer of the Iron Cliffs Company and I was probably secretary and

treasurer of the Pioneer Iron Company. I cannot now remember with certainty.

Q. In the articles for the reorganization of the Pioneer Iron Company, John Abele, Alexander Maitland, C. J. Canda, George M. Miller, H. Groenemeyer, Frederick Hudson and Abram S. Hewitt are named as stockholders. Who was Mr. Abele?

A. Mr. John Abele was the president of the Iron Cliffs Company.

Alexander Maitland was a director of the Iron Cliffs Company. I do not remember whether George M. Miller was a director of the Iron Cliffs Company at that time or not. I cannot remember at the moment whether or not he was at one time a director. The estate of his father was a stockholder. Mr. Groenemeyer was a clerk in my office here. He was my clerk. The Iron Cliffs Company never paid him any salary. He worked under my direction for the Iron Cliffs Company. Frederick Hudson was also my clerk. Abram S. Hewitt is the partner of Cooper, Hewitt & Co. He has at different periods been a director of the Iron Cliffs Company but not consecutively.

Q. In the articles of association for the reorganization of the Pioneer Iron Company, John H. Abeel was stated to be the owner of ten shares, who, as a matter of fact, was the owner of the ten shares?

A. The ten shares were given to Mr. Abeel to qualify him as a director.

The same is true about the ten shares in the name of Alexander Maitland Charles J. Canda, George M. Miller, H. Groenemeyer and Frederick Hudson. The shares that stood in the name of Abram S. Hewitt, as surviving trustee, *were delivered over to Mr. Hewitt as collateral to a mortgage made by the Iron Cliffs Company. Some of them may have been*

delivered previously, but they applied to that mortgage.

As I remember they were the shares of stock that are mentioned in the mortgage of September 10, 1874. The mortgage will answer that question. *The 4,930 shares in the name of Abram S. Hewitt, surviving trustee, belong to the Iron Cliffs Company."*

Being called to answer as a witness by the defendants in the suit, he testifies as follows (Rec. pp. 470, 471, 472, 473, 474):

(On pp. 470, 471.) "I was connected with the Iron Cliffs Company about twenty-four years, and with the Pioneer Company after the Iron Cliffs Company acquired control of it. I was secretary and treasurer of both Companies, and at one time a director of both, I think. My connection with these companies extended down to 1890.

I have a recollection of what was called the Pioneer 99 year lease.

Q. Whether or not the Pioneer Company, or yourself as an officer of the Pioneer Company, had in mind during the years prior to 1890 the existence of the 99 year lease, and took it into consideration as an asset of the company?

Objected to as leading, incompetent and irrelevant, and calling for a conclusion of the witness based upon premises not known.

A. Yes.

Q. Will you state generally whether or not the Pioneer Company did business, more or less, during the years up to 1890, while you were connected with the company after the Iron Cliffs Company had acquired a controlling interest in its stock?

Objected to as calling for a conclusion of the witness, and as incompetent.

A. It did.

I knew as a matter of fact, being secretary and treasurer

of the Pioneer Iron Company during that time, that it did more or less business. *The question came up with reference to conveying all the Pioneer Company's real estate and personal property to the Iron Cliffs Company so as to have one title, and it was concluded not to make this transfer because it would do away with this lease which the company considered valuable. The Pioneer Company did all the business that was necessary to protect the property, and to protect its corporate existence."*

(On p. 472): "Q. *You said in your direct examination that the question came up as to the advisability of conveying the property of the Pioneer Iron Company to the Iron Cliffs Company, and that the reason you did not so convey it was because you were afraid you would thereby lose the 99 year lease, so called?*

A. *I did."*

(On pp. 473, 474): "Q. Did not the question of having the lands of the Pioneer Company conveyed to the Iron Cliffs Company come up only at the time this mortgage of 1874 was made, the time when the Iron Cliffs Company had acquired a control of the stock of the Pioneer Company?

A. I am not positive about it. I would not be at all surprised if it came up in 1874 when we made the larger mortgage. I cannot fix that date.

At that time the Iron Cliffs had acquired control of the Pioneer. * * * I surrendered the books of transfer and minute books of the Pioneer Iron Company to Mr. Mather of Cleveland, Ohio, in 1890. They were sent to him at Cleveland. *The stock transfer book would show when the transfer to the Iron Cliffs Co. was made.* The dates would be accurately inscribed, but it might not necessarily show when it was acquired. The cash books or accounts that were sent from here would show when they were acquired. As you are doubt-

less aware, stocks are often acquired with the necessary irrevocable power of attorney, to transfer them at convenience. The transfer might be made at any time later. The cash book, or rather accounts, that were sent from New York, would show the date.

Q. Was there any change so far as you know in the number of shares held by the Iron Cliffs Company in the Pioneer Iron Company in the name of Abram S. Hewitt, trustee, between the time that mortgage was given and the time you sold out to the Pioneer, to the Cleveland parties, if you know?

A. I cannot remember how that was taken back. Of course, they transfered it back so that the company could use it. It may have been left in their hands and it may not.

Q. *But the question is, did not the Iron Cliffs retain exactly the same interest in the stock of the Pioneer Iron Company from the time it pledged that stock in the mortgage given to Edmund H. Müller and Abram S. Hewitt, up to the time that you New York people disposed of your interest in the Iron Cliffs?*

A. *Yes, we retained the same interest.*"

12th. The defendants in the suit put in evidence, under the complainant's objection that the same were immaterial and irrelevant minutes of proceedings taken October 25th, 1890, for the amendment of the pretended articles of reorganization adopted on the preceding October 7th, 1889.

(Rec. pp. 517 to 520.)

In these minutes there purports to be a list of the stockholders and number of shares of stock held by each, in the Pioneer Iron Company, as follows (Rec. p. 517):

Name.	Residence.	No. of Shares
"W. G. Mather.....	of Cleveland, Ohio...	10 shares.
J. H. Wade, Jr.....	of Cleveland, Ohio...	10 shares.
Fred A. Morse.....	of Cleveland, Ohio...	10 shares.

Name.	Residence.	No. of Shares
Selah Chamberlain	of Cleveland, Ohio...	10 shares.
James H. Hoyt.....	of Cleveland, Ohio...	10 shares.
J. H. Sheadle.....	of Cleveland, Ohio...	10 shares.
W. G. Mather, Trustee..	of Cleveland, Ohio...	4,930 shares.
Alexander Maitland....	of Negaunee, Mich...	10 shares."

In this list Alexander Maitland as holder of ten shares of stock, is the only one who appears in the list of stockholders in the above mentioned proceedings, taken October 7, 1889 (Rec. p. 295 to 300 Ex. E 2.) for reorganizing the Pioneer Iron Company. He was a director of the Iron Cliffs Company, and his ten shares of stock in the Pioneer Iron Company were given to him by the Iron Cliffs Company to qualify him as a stockholder.

C. J. Canda, (Rec. p. 475.)

J. H. Wade, Jr., was a stockholder and *director* of the Iron Cliffs Company.

(Rec. pp. 427, 428.)

Fred A. Morse was secretary of the Iron Cliffs Company.

(Rec. p 457.)

J. H. Sheadle served as secretary of the Iron Cliffs Company.

(See testimony of F. A. Morse, R. p. 459.)

J. H. Hoyt was a director of the Iron Cliffs Company.

Rec. pp. 345, 444, 446, 447, 449.)

He was one of the organizers of the Cleveland Cliffs Iron Company.

(Rec. pp. 410, 411, 412.)

W. G. Mather is president of the Iron Cliffs Company.

(Rec. pp. 499, 500.)

13th. There is no evidence in the case showing the transfer

of the stock from those who are named as stockholders in the proceedings taken on October 7th, 1889, (Rec. pp. 295, 297 Ex. E. 2.) for the reorganization of the Pioneer Iron Company to those who are named as stockholders in these proceedings taken October 25th, 1890 (Rec. pp. 517, 518.) nor is there any evidence how or from what source the latter named persons obtained stock or became stockholders in the Pioneer Iron Company.

14th. After these proceedings of October 25th, 1890, were taken *in which for the first and only time before this suit was commenced Mather appears in any way to be a stockholder in the Pioneer Iron Company, and under the date of February* 19th, 1891, *he (William G. Mather) issued a circular to the stockholders of the Iron Cliffs Company, signed by himself and James H. Hoyt, dated February* 19, 1891, *in which a plan is set forth for the consolidation or combination of the Cleveland Iron Mining Company and the Iron Cliffs Company.* (Rec. pp. 345, 346, 347, 348.)

After pointing out how such combination could be carried out in spite of the minority stockholders, and how the statute of Michigan could be evaded, Mather says in this circular (Rec. pp. 347, 348.):

"Third. The Iron Cliffs Company has a valuable privilege which would, necessarily, *be wiped out by the consolidation.* By special legislation, procured by Mr. Tilden, the Iron Cliffs Company now has the peculiar right of owning stock in subcompanies. Under this special legislation *it owns the stock of the Excelsior, and the Pioneer Companies.*"

The circular then proposes a second plan by forming a corporation under the laws of West Virginia *to hold the stock of the Pioneer Iron Company,* and of the Cleveland Company, and issuing instead thereof to the stockholders of those com-

panies the stock of the West Virginia corporation. One of the advantages mentioned for this plan is stated thus (Rec.p. 348):

"5. *No statement of condition or lists of stockholders need be furnished.*"

By this circular, signed by William G. Mather, the fact is stated, and is admitted by him to be, *that at the date of this circular, February* 19th, 1891, *the Iron Cliffs Company owned the stock of the Pioneer Iron Company. He himself, is shown by this statement not to be the owner of any of the stock of the Pioneer Iron Company. He says the Iron Cliffs Company owns the stock.* (R. p. 348.)

James H. Hoyt, who signed this circular with Mather, being called as a witness in behalf of Mather (R. p. 343.) testified as follows (R. pp. 345, 346.):

"Q. I will try and aid you. Do you remember about the month of May, together with Willaim G. Mather, representing the Iron Cliffs Co. having issued about February 19, 1891, a circular to the stockholders of the Iron Cliffs Co., proposing an exchange of their stock for the stock of the Cleveland Cliffs Co. to be organized, or which you were intending to organize in West Virginia?

A. I have a recollection of some such circular. *I think the circular you show me is the circular that was issued. The Iron Cliffs Company owns some of the stock of the Pioneer Iron Co. I haven't examined that part of the circular which states that the Iron Cliffs Co. owned the stock of the Pioneer Iron Co. I have no doubt that statement was true if we made it at that time. I think that was true, though not of record.* They didn't own it of record, the equitable owner of it.

The Iron Cliffs Co. does not own it all now. Outside of the Iron Cliffs Co. Mr. Garretson owns 50 shares of stock, Mr. Hale owns 960 shares, Mr. Peter White owns 10 shares, I own 10 shares, Mr. Perkins owns 10, Mr. Wade, I think,

owns 10, Mr. Samuel Mather 10, and I think there are some other scattering shares owned by other people. I don't exactly recollect. Mr. Garretson and Mr. Hale have owned their stock something like two or three years, I think. I am not quite sure of that, but the other gentlemen have owned their stock, I think, for 8 or 9 years.

Q. Then these gentlemen whom you have named as owing shares of stock in this company have procured the same and became the owners since the issuing of this circular in 1891?

A. No, I don't think so; I think that some of the stock was owned by some other gentlemen I have named prior to the issuing of the circular, but my recollection is not definite about that."

There is no evidence in the case that *from the time said circular of February* 19th, 1891, *was issued down to the commencement of this suit any change was made in the ownership by the Iron Cliffs Company of the stock of the Pioneer Iron Company, or that Mather after that date, or at the time of the commencement of this suit, owned or held in trust, or held in any manner any of the stock of the Pioneer Iron Company.*

15th. Less than three months after this circular of February 19th, 1891, was issued, and on May 9th, 1891, Mather and Hoyt, together with A. C. Dustin, Mr. Hoyt's partner, Fred A. Morse, the Secretary of the Iron Cliffs Company and one Henry S. Sherman, each as owner of one share of stock, formed the Cleveland Cliffs Iron Company under the laws of West Virginia, with an authorized capital of five million dollars.

(R. pp. 410, 411, 412.)

16th. James H. Hoyt in his testimony, called as a witness by the defendants in the suit, says (R. pp. 410, 411.): "*The Cleveland Cliffs (Iron) Company owns all the stock of the*

Iron Cliffs Company and of the Cleveland Iron Mining Company."

17th. Mather is President of this Cleveland Cliffs Iron Company and of the Iron Cliffs Company.

(R. pp. 431, 499, 500.)

18th. E. R. Perkins, a stockholder in the Iron Cliffs Company, and in the Cleveland Iron Mining Company (R. p. 419.) testifies that on May 4th, 1891, he issued a circular to the stockholders of the Iron Cliffs Company a copy of which is Exhibit "A." (R. pp. 419, 420.) in which recommending the combination of the Iron Cliffs Company and the Cleveland Iron Mining Company he says (R. p. 420): "Deeming it for the mutual advantage of the two companies that a combination should be effected, *and not wishing to bring about a consolidation, by which valuable privileges now possessed by the companies would be lost*, the syndicate whom we represent has perfected a plan for the organization of a new company, under the laws of the State of West Virginia, to be known as the Cleveland Cliffs Iron Company, with a capital stock of $5,000,000."

Questioned in regard to the privileges referred to in favor of the Iron Cliffs Company, he says (R. p. 423.):

"Q. Do you not know as a matter of fact, that they did own the stock of the Pioneer Iron Company—the capital stock of the Pioneer Iron Company and the Excelsior Iron Company?

A. *My impression is that the Iron Cliffs Co. had such ownership then, and now.*"

19th. Charles J. Canda, as witness on the part of the defendants in the suit testifies (R. pp. 470 471.) that he "was connected with the Iron Cliffs Co. about twenty-four years, *and with the Pioneer Co. after the Iron Cliffs Co. acquired*

control of it. I was secretary and treasurer of both companies, and at one time a director of both, I think."

"My connection with these companies extended down to 1890."

"I have a recollection of what was called the Pioneer 99 year lease.

Q. Whether or not the Pioneer Company, or yourself as an officer of the Pioneer Company, had in mind during the years prior to 1890 the existence of the 99 year lease, and took it into consideration as an asset of the company?

Objected to as leading, incompetent and irrelevant and calling for a conclusion of the witness based upon premises not known.

A. Yes.

Q. Will you state generally whether or not the Pioneer Company did business, more or less, during the years up to 1890, while you were connected with the company after the Iron Cliffs Company *had acquired a controlling interest in its stock?*

Objected to as calling for a conclusion of the witness, and as incompetent.

A. I did.

I knew as a matter of fact, being secretary and treasurer of the Pioneer Iron Company during that time, that it did more less business. The question came up with reference to conveying all the Pioneer Company's real estate and personal property to the Iron Cliffs Company so as to have one title, *and it was concluded not to make this transfer because it would do away with this lease which the company considered valuable. The Pioneer Company did all the business that was necessary to protect the property, and to protect its corporate existence."*

(R. p. 472.) he says: "Q. You said in your direct exami-

nation that the question came up as to the advisability of conveying the property of the Pioneer Iron Company to the Iron Cliffs Company and that the reason you did not so convey is was because you were afraid you would thereby lose the 99 year lease, so-called?

A. I did.

Q. When was it that that question came up?

A. It is a long while to remember, *but I think it was at the time we made a mortgage, when the first mortgage was made to the Iron Cliffs Co.*"

R. pp. 473, 474.) he says: "Q. Did not the question of having the lands of the Pioneer Company conveyed to the Iron Cliffs Company come up only at the time this mortgage of 1874 was made, the time when the Iron Cliffs Company had acquired a control of the stock of the Pioneer Company?

A. I am not positive about it. I would not be at all surprised if it came up in 1874, when we made the larger mortgage, I cannot fix that date.

At that time the Iron Cliffs had acquired control of the Pioneer."

(R. p. 474.) he says: "I surrendered the books of transfer and minute books of the Pioneer Iron Company to Mr. Mather of Cleveland, Ohio, in 1890. They were sent to him at Cleveland. *The stock transfer book would show when the transfer to the Iron Cliffs Co. was made.* The dates would be accurately inscribed, but it might not necessarily show when it was acquired. The cash books or accounts that were sent from here would show when they were acquired. As you are doubtless aware stocks are often acquired with the necessary irrevocable power of attorney, to transfer them at convenience. The transfer might be made at any time later. The cash book, or rather accounts, that were sent from New York, would show the date.

Q. Was there any change so far as you know in the number of shares held by the Iron Cliffs Company in the Pioneer Iron Company in the name of Abram S. Hewitt, trustee between the time that mortgage was given and the time you sold out to the Pioneer, to the Cleveland parties, if you know?

A. I cannot remember how that was taken back. Of course they transferred it back so that the company could use it. It may have been left in their hands and it may not.

Q. *But the question is, did not the Iron Cliffs retain exactly the same interest in the stock of the Pioneer Iron Company from the time it pledged that stock in the mortgage given to Edmund H. Miller and Abram S. Hewitt, up to the time that you New York people disposed of your interest in the Iron Cliffs?*

A. *Yes, we retained the same interest.*"

20th. To show the facts of the Iron Cliffs Company's ownership of the stock of the Pioneer Iron Company, the complainants in the suit took the deposition of the witnesses in Cleveland who had charge of the books, and they were unable to secure their production.

It is shown that after the subpoenaes were served on the witnesses to produce the books the books were put into the hands of the counsel of the defendants in the suit, Hoyt, Dustin & Kelley, and these attorneys refused to produce the books, or to permit them to be produced.

Frank B. White (R. p. 430.) examined on December 11th, 1900 (R. p. 419.) was employed by the Cleveland Cliffs Iron Company, and had charge of the general books (R. p. 430). He was subpoenaed to produce the books of the Iron Cliffs Company and the Pioneer Iron Company. He didn't bring them as they were not in his control. He declined to bring the books until instructed by the President, Mr. Mather.

whom he might have reached by telephone, he presumes. (R. p. 431).

Examined again February 18th, 1901, (R. p. 442.) the witness says (R. p. 451.) he is the general book-keeper of the Cleveland Cliffs Iron Company and the Iron Cliffs Company, and that he last saw the books of the Iron Cliffs Company and the Pioneer Iron Company within a week or ten days in the Cleveland Cliffs office. They were taken from his desk four or five days before he was served with the subpoena, and he does not know where they were taken to. This is evidence that the books disappeared after notice had been received by the defendants of the taking of his deposition.

Edwin V. Hale, examined December 11th, 1900, (R. p. 419) says (R. p. 433): He was elected secretary of the Pioneer Iron Company in the previous April (April 1900). Acquired stock in the company thirty days before, and on his examination, being advised by Mr. Kelley of Hoyt, Dustin & Kelley, who represented the defendants, he refused to state the circumstances of acquiring of such stock (R. pp. 433, 434, 435). He says he purchased the stock at the solicitation of James H. Hoyt who told him he could buy stock of Mather and William G. Mather delivered him the certificate of stock (R. p 436). He pledged the certificate with a separate power of attorney to borrow the money with which to pay for the stock (R. pp. 436, 437). He says (R. pp. 439 440.) he has not the custody of the Pioneer Iron Company's books, but understands they are in the hands of Hoyt, Dustin & Kelley. After being subpoenaed he went to the office of Hoyt, Dustin & Kelley and made a demand for the books. He told Kelley that a subpoena had been served upon him to produce those books in Court and he was there in pursuance of the subpoena, and Kelley refused to let him have the books. The witness added:

"I will produce those books in Court before the notary here if I can get them from Hoyt, Dustin & Kelley."

At this point the Record says (p. 440):

"Mr. Kelley: Mr. Kelley, who was present representing that firm, desires to state in the record, in order that the gentleman may be saved trouble in this matter, *that Hoyt, Dustin & Kelley will not produce the books in this proceeding and will not surrender them to the witness for the purpose of being produced here.*"

This witness was examined again on February 18, 1901, and says (R. pp. 442, 443): "I now state that I am secretary of the company (Pioneer Iron Company), and I do not know where the books and papers are belonging to the company. I do not know who is the president of that company at the present time. *No books or papers, nor the control of such books and papers have ever been given to me as secretary. I have not performed any official acts to my knowledge.*"

Fred A. Morse, examined December 3rd, 1900 (R. p. 457) says he is secretary of the Iron Cliffs Company. He says (R. p. 459) that he does not know how he came to be appointed secretary of the Iron Cliffs Company except that he was in the office as secretary of the Cleveland Iron Mining Company. Thinks it was a year or two after William G. Mather was made president of the Pioneer Iron Company that he was appointed secretary of that company. He has been employed in the office of the various corporations of which Mr. Mather and his friends have control since 1863. He states (R. pp. 460, 461.) that a subpoena or notice to produce the books of the Iron Cliffs Company was served upon him, but he did not produce the books *as they were delivered to Hoyt, Dustin & Kelley on Saturday after the subpoena or notice had been delivered to him. He requested the attorneys to allow him to bring the books, but the attorneys refused.*

Mr. James H. Hoyt, who was present as counsel for the defendants in the suit was thereupon requested to produce the books and refused to do so (R. p. 461).

The witness says Robert C. Mann, the auditor of the Iron Cliffs Company is the man who took the books and delivered them to Hoyt, Dustin & Kelley (R. p 463).

James H. Hoyt, counsel for the defendants in the suit, examined by complainants February 18th, 1901 (R. pp. 442 443) testifies that he don't know where the books and papers of the Pioneer Iron Company are (at the present time) (R. p. 443).

He says (R. pp. 444, 445): "I have been connected with the Iron Cliffs Co. as counsel during the last seven or eight years. I have also been a director during the same period, if I recollect rightly. * * * I think I am a stockholder in the Iron Cliffs Co. and in the Pioneer Iron Co."

He says (R. pp. 446, 447): "I decline to state whether the Iron Cliffs Company purchased the stock of the Pioneer Iron Company. My information in regard to that came to me in my professional capacity. * * * I don't know of the purchase of the stock of the Pioneer Iron Company by the Iron Cliffs Company *from an examination of the books.* If I have any information on that subject it has to come to me as counsel.

Q. Have you any information on that subject?

A. If I have any information it has to come to me as counsel.

I have a certain information, I will not state that information for the reason that any information I have has come to me as counsel, and is therefore, privileged, and I have no right to communicate it. * * * I say that I have received no information of the affairs of the Pioneer Iron Company or the Iron Cliffs Company as a director or stockholder, for the reason *that I have been made director of those companies*

simply on account of my position as counsel, and for no other reason whatever."

On page 449 this witness says: *"As a director of the Iron Cliffs Company I have met the other directors of the Pioneer Iron Company from time to time.* All the information I have as to whether the Iron Cliffs Company claims to own the stock of the Pioneer Iron Company came to me as counsel, because I was elected a director of the companies simply because I was counsel, to give them advice in their meetings, and that is the reason I decline to answer."

This witness who thus refuses to testify when called by the complainants in the suit on the subject of the ownership by the Iron Cliffs Company of the stock of the Pioneer Iron Company on the ground that his information had come to him as counsel of the companies, *had already testified on the same subject when examined as a witness for his clients, the defendants in the suit*, (the plaintiffs in error) where on cross examination (R. pp. 345, 346.) referring to said circular issued and signed by himself and William G. Mather he says: *"The Iron Cliffs Co. owns some of the stock of the Pioneer Iron Co.* I haven't examined that part of the circular which states that the Iron Cliffs Co. owned the stock of the Pioneer Iron Co. *I have no doubt that statemment was true if we made it at that time. I think that was true, though not of record. They didn't own it of record, the equitable owner of it."*

Re-examined by counsel of plaintiffs in error, he says (R. p. 346): "The Iron Cliffs Co. does not own it all now. Outside of the Iron Cliffs Co. Mr. Garretson owns 50 shares of stock, Mr. Hale owns 960 shares, Mr. Peter White owns 10 shares, I own 10 shares, Mr. Perkins owns 10, Mr. Wade, I think, owns 10, Mr. Samuel Mather 10, and I think there are some other scattering shares owned by other people. I don't exactly recollect."

It is to be observed that under the law and practice in the State Courts of Michigan the statements of a witness upon the cross-examination is as much the testimony on the part of the party calling the witness as are his statements given on the direct examination.

Campau vs. Dewey, 9 Mich., 381, at 417, 418.
Wilson vs. Wagar, 26 Mich., 452, at 458.
Turnbull vs. Richardson, 69 Mich., 400, at 416.
Ireland vs. Railroad Co., 79 Mich., 163, at 164.

It is also to be observed that the witness Hoyt, while counsel for Mather in this case, when testifying as above (R. p. 346.) in Mather's behalf, and in answer to the questions of the solicitor of record of Mr. Mather, states the ownership of the stock of the Pioneer Iron Company, *and does not include William G. Mather as an owner or holder of any of the stock.*

21st. This testimony was given at the trial of the case before the Circuit Judge which took place on and from the 19th to the 23rd of March, 1901. (R. p 52).

At that time Mather did not claim to own, or to hold in trust, any of the stock of the Pioneer Iron Company by his answer in the suit.

(See his answer, R. pp. 40 to 44.)

In this, his original answer, (Paragraph 19, p. 44) Mather, together with the Iron Cliffs Company and the Cleveland Cliffs Iron Company, says:

"19. *And these defendants further answering say they have no personal interest in any of the matters set forth in said Bill, except as they, or some of them, may be stockholders of said Pioneer Iron Co., or as an officer or agent thereof.*"

22nd. It was after the evidence had been closed in the case, and *on June 22nd, 1901*, that Mather by amendment to his answer first set up any claim to ownership of any stock, or to hold in trust any stock in the Pioneer Iron Company.

(R. pp. 49, 52.)

23d. The complainants in the suit sought to procure the testimony of Mather, by taking his deposition at his place of residence (Cleveland), and repeatedly issued subpoenas for him, but the officer's return to the subpoenas in respect to Mather is—"not found."

(R. pp. 430, 438, 441, 463.)

The reason why the defendants in the suit suppressed and refused to produce the books appears from the testimony of C. J. Canda above quoted, that he "surrendered the books of transfer and minute books of the Pioneer Iron Company to Mr. Mather of Cleveland, Ohio, in 1890. They were sent to him at Cleveland. *The stock transfer book would show when the transfer to the Iron Cliffs Co. was made.*"

(R. p. 474.)

24th. After the above depositions were taken which show that the complainants could not procure the evidence of the books of the Iron Cliffs Company, N. A. Gibbs was called by the complainants in the suit and testified that he was in the employ of the Iron Cliffs Company from 1873 to 1893, or 1894; that he was assistant bookkeeper, head bookkeeper and general manager of the Iron Cliffs Company (R. pp. 494, 495); that he was appointed general manager by William G. Mather the President (R. p. 499). He says: "I knew there was such an organization as the Pioneer Iron Co. during these years that I was working for the Iron Cliffs Co. As I consider it, it was all worked as one company." (R. p. 495.)

He further testifies as follows (R. pp. 495, 496):

"Q. Was the Pioneer Iron Company carried as a whole on the books of the Iron Cliffs Co?

A. The way it seemed to be, we had an account on our books called the Pioneer Iron Co., which I suppose was the amount of the purchase price by the Iron Cliffs Co. less whatever profits or losses there may have been by that company up to the time they took charge of it.

Q. You mean to say that was the price they paid for the stock of the Pioneer Iron Co. less the profit or loss?

A. That was the way I always supposed it was, but have no knowledge of my own in regard to it.

Q. How was it carried on the books with reference to being in lump sum or otherwise?

A. It was carried in a lump sum."

Being asked by defendants' counsel (R. p. 501). Who was manager of the Pioneer Iron Company in 1887, 1888 and 1889, he says: "I do not know of any other manager only the one that was manager for the Iron Cliffs and Cleveland Cliffs Company."

On page 502 he says the Pioneer Iron Company did not pay any portion of his (the managers) salary.

Referring to the Iron Cliffs Company's books, the witness says (R. p. 503): "Our books at Negaunee took care of all the expenses of mining, including the salary of manager, until it was put in a separate department, the mining department, and the secretary and treasurer and sales agent paid themselves and their clerk hire. That was all I ever knew of. We used to transfer accounts from their books to ours monthly. We used to transfer accounts at Negaunee. By "we" I mean the Iron Cliffs Company. We transferred the accounts from the secretary and treasurer's office, and also the sales agent at Chicago, sales of ore and iron and money received for the

same, and the expenses of each of their offices; we would transfer all these expenses to our books.

Q. You are now stating your recollection of what the books showed, are you?

A. I know what they showed in regard to these things. I am positive as regards this."

25th. The statutes of Michigan provide for the appointment of a Commissioner of Mineral Statistics, whose duties require him to make report of the status,progress and development of the State's mining and smelting industries, and he is authorized to require individuals and corporations occupied in minig to make reports to him.

1 Howell's Statutes, Secs. 839, 843, 844.

The provisions are as follows:

Sec. 839. "Section 1. The people of the State of Michigan, enact, That it shall be the duty of the Governor of the State of Michigan to appoint, by and with the consent of the Senate, a Commissioner of mineral Statistics for the State; whose duty it shall be to make an annual report to the Governor, setting forth in detail the mineral statistics for the year; with the progress and development of its mining and smelting industries."

Sec. 843. "Section 5. Said commisioner is hereby authorized to demand, and it shall be the duty of all corporations or individuals engaged in mining to make such reports under oath, as to product and other matters as shall be required by him, on blanks to be furnished by said commissioner for that purpose."

Sec. 844. "Section 6. It shall also be the duty of said commissioner to report to the Auditor General on or before the first day of May in each year, the amount of copper, iron, coal, or other mineral produced by each and every corporation

or individual engaged in mining in this State during the preceding calendar year, which reports shall be the basis for computing the specific taxes chargeable against such corporations or individuals, on the amount of mineral produced by them, and in case any corporation or individual engaged in mining in this State shall neglect or refuse to make the reports required by section five of this act, at the time and in the manner therein specified, then it shall be the duty of said Commissioner of Mineral Statistics, to report the amount of specific tax chargeable against such delinquent corporations or individuals."

The complainants in the suit introduced the official reports made under this statute for 1877 and 1878, and previous years, which reports state that, "the Pioneer Iron Company, by whom the furnace was built became subsequently merged into the Iron Cliffs Company." (R. p. 312.)

The report for 1885 states, "The Pioneer Furnace went into blast in February, 1858, and has been continously operated since, saving only such stoppages as necessarily occur. It was originally the property of the Pioneer Iron Company, which company was subsequently, in 1866, *absorbed by the Iron Cliffs Company, that now owns and operates the furnace.*" (R. p. 326.)

The statute of Michigan of 1853, under which the Pioneer Iron Company was organized, required the Pioneer Iron Company to file each year with the Auditor General a report of the number of shares of stock issued by the corporation, the names of the stockholders, and the number of shares held by each at the time of said report, and the amount of iron ore mined within the past year.

Session Laws of Mich. of 1853, p. 54, Sec. 5, p. 57, Sec. 18.

Said statute is as follows:

"Sec. 5. Every such corporation shall annually, in the month of July, make a report, signed by a majority of the Board of Directors containing:

1. The amount of capital actually paid in:
2. The amount invested in real estate;
3. The amount of personal estate;
4. The amount of their debts and credits, as near as may be;
5. The name of each stockholder, and the number of shares held by him, at the date of such report; and every such report shall be verified on oath, by the officers signing the same; and if any person shall, as to any material facts, knowingly swear or afirm falsely, he shall be deemed guilty of perjury, and be punished accordingly."

"Sec. 18. Every such corporation formed for mining purposes, shall annualy in the month of July in each year, make a report, which shall state the amount of copper, iron or other mineral which such company may have mined within the year past, which report shall be signed by the president and a majority of the directors and shall be verified by the oath of the secretary or other officer making the same, and be filed in the office of the clerk of the county in which the business of any such corporation is carried on, and a duplicate thereof in the office of the Auditor General."

A statute was passed in 1877, requiring to be filed in the month of July of each year a more full and particular report, showing not only the names of stockholders and number of shares held by each, but also required a report of the condition of the business of the company, and provided that: "Whenever any corporation ceases to carry on business for one year or more it shall not be required to make such reports until it again commences business."

Session Laws of Mich., 1877, p. 94, 95, Sec. 32 and 33.

1 Howell's Statutes, Sections 4107 and 4108 provide as follows:

Sec. 4107. "It shall be the duty of the president and secretary of each corporation, annually in the month of July, to make a report for the preceding year ending December thirty-first, containing a statement of:

First. The amount of cash paid in on the capital stock;

Second. The amount of capital paid in by the conveyance of property to the corporation;

Third. The entire amount invested in real estate;

Fourth. The amount of personal estate;

Fifth. The amount of the unsecured or floating debt of the corporation, as near as may be;

Sixth. The amount of the secured or bonded debt of the corporation;

Seventh. The amount due to the corporation;

Eighth. The number of gross tons of copper obtained;

Ninth. The number of gross tons of two thousand two hundred and forty pounds each, of iron ore mined and shipped;

Tenth. The number of gross tons of mineral coal mined;

Eleventh. The number of gross tons of pig iron manufactured;

Twelfth. The number of tons of any other mineral or ore mined;

Thirteenth. The amount of slate or stone mined;

Fourteenth. The name of each stockholder of record and the number of shares held by him on the said thirty-first day of December and when stock is held in trust or in some representative capacity, it shall be so stated."

Sec. 4108. "Such report shall be executed in duplicate by said president and secretary, and shall be sworn to before some officer authorized to administer oaths. If sworn to

outside the limits of the State it shall be before a commissioner for Michigan, a notary public having a seal, or any other person authorized to take acknowledgments of deeds. Such duplicate report shall be filed on or before the thirty-first day of July annually, one copy with the Auditor General of this State and the other with the clerk of the county in this State where the mine or smelting or manufacturing works of the corporation are principally or wholly situated. If any person signing such puplicate report shall, as to any material facts therein stated wilfully swear falsely, he shall be deemed guilty of perjury. Blank reports shall be prepared by the Auditor General and furnished to any corporation on application therefor. *Whenever any corporation ceases to carry on business for one year or more it shall not be required to make such reports until it again commences business.*"

It is shown by the evidence that no such reports, either of its stockholders, or of its business were made by the Pioneer Iron Company after the year 1860.
(R. p. 85.)

In 1855, a statute was passed, requiring every mining corporation having shares of stock to file with the Secretary of State, within ninety days after the passage of the Act, and annually thereafter, on or before the first of January of each year, a list of the number of shares issued by the corporation, and the names of the owners thereof with the number of shares owned by each.

Session Laws of Mich. of 1855, p. 277, Sec. 3.
2 Howell's Statutes, Sec. 9351.

The statute is as follows:

Sec. 9351. "Every banking, insurance, mining, plank or other incorporated company, who issue scrip *or shares*, shall within ninety days after the passage of this act, file with the

Secretary of State a list of the number of shares issued by said corporation, and the names of the owners thereof, with the number of shares owned by each; *and annually thereafter* shall file with said Secretary of State, on or before the first day of January, in each and every year a statement similar to that above required, showing the ownership of the shares of said corporation at the day of the date of said statement; all of which statements, including the first, shall be made by one of the officers of said company, under oath."

It is shown by the evidence that no report under this statute was made to the Secretary of State after the year 1860.
(R. p. 516.)

The inference to be drawn from the above evidence is that the Pioneer Iron Company had become merged in and absorbed by the Iron Cliffs Company; that its stock was owned by that company, and that it carried on no business.

26th. Notwithstanding the foregoing evidence showing that all of the stock of the Pioneer Iron Company was owned by the Iron Cliffs Company at the commencement of this suit, *Mr. Mather did not testify in the case at all*, and offered no evidence for the purpose of showing his ownership of stock in the Pioneer Iron Company.

It may be observed that the evidence in the case was taken before the Circuit Court in which the suit was instituted during the period from the 19th of March 1901, till the 23rd day of March, 1901.
(R. p. 52.)

27th. *Afterwards*, and on the 4th day of April, 1901, under the supervision of James H. Hoyt, Mr. Mather's counsel, and acting by his proxy, supplementary reorganization proceedings were taken to *reorganize* the Pioneer Iron Company, in which proceedings William G. Mather is made to appear

as a holder, as trustee, of 3930 shares, and as a holder personally of 10 shares.

These proceedings were put in evidence by the defendants in the suit and appear in the Record at pages 529 to 532.

The holding of these shares in these proceedings is evidently the same holding of the shares represented in the proceedings above referred to taken on the 25th of October 1890, for the amendment of the articles of reorganization, which were adopted October 7th 1889, (R. p. 517) and which holding was shown to be a holding for the Iron Cliffs Company *by the statement of Mather himself in his circular of February* 19th, 1891, *above referred to, in which circular he stated that the Iron Cliffs Company owned the stock of the Pioneer Iron Company.* (R. p. 345 at 348). This circular, signed also by James H. Hoyt, the latter testified was true.
(R. p. 346.)

Third. On the evidence given in the case, the Supreme Court of Michigan was clearly authorized to find that the case made by the Bill of Complaint is sustained, viz:

That the complainants in the suit were the owners of the lands in question, subject to the lease of September 17th, 1857, executed by Charles T. Harvey to the Pioneer Iron Company, by the provisions of which lease the only mining authorized to be done thereunder was limited *to mining to be done exclusively and solely by the Pioneer Iron Company of ore which the Pioneer Iron Company alone should actually convert into merchantable iron in the Pioneer Iron Company's own furnaces or forges;* that the charter of the Pioneer Iron Company expired on the 2nd of April, 1887, by the term of its existence prescribed in the charter; *that the Pioneer Iron Company had long since entirely ceased to do any business; that its furnaces had been dismantled and destroyed; that the right*

to mine under such lease was appurtenant to such furnaces or forges; that all the stock of the Pioneer Iron Company had been acquired and was held by the Iron Cliffs Company; that the stock of the Iron Cliffs Company was owned by the Cleveland Cliffs Iron Company; *that these two companies, together with William G. Mather and Murray M. Duncan had formed and were engaged in a scheme to make use of the name of the Pioneer Iron Company as a means by which the Iron Cliffs Company and the Cleveland Cliffs Iron Company might mine and remove ore from said lands, obtaining the benefit thereby of the provisions of said lease, and that the mining was not done by the Pioneer Iron Company, whether it had ceased to exist or was still in fact in existence; that mining so done by the Iron Cliffs Company and the Cleveland Cliffs Iron Company was unlawful and was a trespass, and an irreparable injury to the complainants in the suit, and that the Court was authorized to enjoin the acts of the defendants in the suit in carrying on such mining.*

Fourth. The finding and decision of the Supreme Court of Michigan. (The italics are ours.)

The opinion of the Court, delivered by Justice Grant, after stating the case of the Bill of Complaint, says (R. p 568): "We think, however, the main purpose of the Bill is, *not to* "*declare a forfeiture of the lease, but to determine the rights* "*of the parties, which depend largely upon the construction* "*of the deeds, the leases, and the various acts and conduct* "*of the parties, extending over a period of more than 40 years,* "*and to enjoin a continuing trespass.* The case is one "peculiarly appropriate to a Court of Equity.

"The Bill sets forth three notices in the name of the Pioneer "Iron Company, that it had entered upon the disputed lands "for the purpose of mining iron ore. It is, therefore, appar-

"ent that numerous acts of trespass and the removal of valu-
"able ore were threatened. The defendants are not in posses-
"sion. * * * Whether or not under these circumstances,
"ejectment would lie, we need not determine. Complianants
"being in possession of the property, if their title is valid,
"*irreparable injury was threatened by the defendants. Such*
"*trespasses a Court of Equity will enjoin.*"

Referring to the objection that the Pioneer Iron Company is not made a party to the suit, the Court uses this language: (R. pp 569 570): "It is also urged as a fatal objection to
"the maintenance of the Bill that the Pioneer Iron Company
"is not made a party. Under the allegations of the Bill, *and*
"*as well under the proofs, the Pioneer Iron Company is used*
"*as a 'dummy' for the benefit of the defendant* COMPANIES.
"The defendants own, and have owned for many years, *all its*
"*capital stock*, its furnaces and property, both real and person-
"al. They have managed all its affairs, and for their own
"benefit. All its accounts if any have been kept in the
"name of the Pioneer Iron Company, *have been kept upon the*
"*books of the defendants.* The defendants refused upon the
"trial to produce the books of the Pioneer Iron Company, or
"their own books showing the accounts. Some of its officers
"having charge of the books were produced as witnesses, and
"testified to the above facts. Under these circumstances these
"defendants cannot escape the consequence of their acts done
"*in the name of the Pioneer Iron Company for their own*
"*benefit.* Admitting that the Pioneer Iron Company is not
"a dead corporation, *yet all its property, franchise, and rights*
"*are owned by the defendant companies*, so far as the rights
"under the 99 year lease are concerned, and are fully repre-
"sented by those now before the Court. The theory of the
"complainants as stated in their Bill, is that the Pioneer Iron
"Company is a dead corporation; its charter expired by limi-

"tation April 2, 1887; and that no steps were taken for some "time thereafter to reorganize the corporation under the "amendment to the Constitution and the Law; and that that "action was wholly invalid. *The Pioneer Iron Company "therefore, was not a necessary party.* (Citing authorities.) "Complainants could not well have made the Pioneer Iron "Company a party defendant *without recognizing it as an "existing corporation.* Its existence was in issue, and, *having "expired by limitation of its charter,* the burden of proof "was upon the defendants to show a valid reorganization, so "as to make it the successor of the company within the terms "of the 99 year lease. *Equity will enjoin the threatened acts "of those assuming to act within the name of a dead corpora-"tion.* (Citing authorities.)

"3. The further answer to those objections to the juris-"diction of the Court is that they should have been raised by "demurrer. The facts upon which they are based are ap-"parent upon the face of the Bill. The defendants having "answered, put the case at issue upon the merits, and taken "proofs upon that issue, cannot now raise the question of "jurisdiction."

(Citing authorities.)

The Court then states (R. p. 570.) that whatever interests in the lands Reynolds reserved to himself which were assignable by him or descendable to his heirs, the complainants owned by appropriate deeds. Whatever interests are not now vested in the Pioneer Iron Company by the 99-year lease are also owned by complainants by appropriate conveyances from Harvey.

The Court then considers (R. pp. 570, 571, 572) the question in respect to what interests Reynolds conveyed to Harvey and what interest he retained in himself, which interest passed to the complainants, and con-

cluded the consideration of this question by saying (R. p. 572): "The conduct, therefore, of these defendants "is consistent only with the theory that they recognized the "title to an undivided half of the minerals to be in these "complainants."

The Court next takes up the question of the construction of the 99 year lease, which is the lease in question, and says (R. p. 573): "The 99 year lease conveyed to the Pioneer Iron "Company only an indivisible, incorporeal, and *personal right* "*to mine ore, and then only for such as it should actually* "*convert into merchantable iron at its own furnaces or* "*forges. It granted only certain rights and privileges for a* "*specific purpose. It prohibited assignment and the mining* "*of ore for furnaces not owned by the company.*"

After referring to the right reserved to Harvey, his heirs and grantees to mine ore, and the effect of the conveyance made by Harvey as a division of this incorporeal hereditament, the opinion proceeds as follows (R. p. 573): "Was this right "to mine ore under this lease *appurtenant to the furnace then* "*existing?* It is true that the lease itself does not in express " terms limit it to the then existing furnace. We must, there- "fore, look to the situation of the parties, the object in con- "templation, and the surrounding circumstances, in determin- "ing the question."

After referring to the situation of the parties, the object in contemplation and the surrounding circumstances, the opinion says (R. pp. 574, 575): "We therefore conclude that "the Pioneer Iron Company contemplated, provided for, and "erected only one furnace with two stacks; that the parties "contracted with reference to that furnace; *and that the min-* *ing right conveyed was appurtenant to the furnace.*"

"6. *By the voluntary act of the defendant companies,* "*who, since 1866, operated it, the furnace was dismantled in*

"1894, *and totally destroyed. It has never been rebuilt, and* "*there evidently was no intention to rebuild it. The abandon-*"*ment and destruction of the furnace also destroyed the ap-*"*purtenant right to mine the ore under the lease. Nothing* "*was left for the right to be appurtenant to.* * * * "

"7. Soon after the execution of the 99-year lease, the "Pioneer Iron Company made some explorations upon certain "portions of the land covered thereby found ore, but not in "paying quantities, abandoned the explorations, and for full "43 years made no attempt to avail itself of this mining right. "In 1866, it conveyed to the Iron Cliffs Company by lease for "a period of ten years 'all its iron works, buildings, lands and "rights, etc.,' (reserving, however, certain rights and privileges "not necessary to mention), and provided by the lease that "dividends should be paid directely to its stockholders rather "than into its treasury. *The Iron Cliffs Company afterwards* "*became the owner of all its stock, and thereafter carried on* "*the furnace business. The Pioneer Iron Company never* "*thereafter took any control of its furnace. It was regarded* "*as merged in the Iron Cliffs Company.*"

The conclusion of the Court was that the decree from which appeal was taken to the Supreme Court of the State be affirmed (R. p. 576). That decree adjudged: "That the "defendants, their counselors, attorneys, solicitors and agents, "and each and every of them whether acting in their individ-"ual or representative capacity, immediately vacate and remove "from the lands described in the Bill of Complaint, and that "they and each of them, be and they hereby are perpetually "enjoined from further entering upon the said lands of the "complainants for the purpose of exploring for or taking "therefrom any minerals or iron ore, or for any purpose what-"ever, without the consent and authority of the complainants." (R. p. 559.)

The decision of the Supreme Court of Michigan is to this point, viz: That the complainants in the suit are the owners of the lands in question, subject to the right to mine ore therefrom granted to the Pioneer Iron Company by the lease of September 17th, 1857, made by Charles T. Harvey to the company, *which right under the lease was limited to the Pioneer Iron Company and was made appurtenant to that company's furnace, and was not assignable.* The furnace to which the rights to mine ore were made appurtenant was dismantled and destroyed in 1894 and has never been rebuilt.

The Iron Cliffs Company acquired and owned all the stock of the Pioneer Iron Company and the Iron Cliffs Company and the Cleveland Cliffs Iron Company make use of the Pioneer Iron Company as a dummy to do the work of mining upon the lands. The defendants in the suit "*cannot escape "the consequence of their acts done in the name of the Pioneer "Iron Company for their own benefit.*" These acts are the acts complained of and claimed by the defendants,viz: Exploring for and mining ore on said lands. The defendants in the suit are enjoined from doing such acts.

Fifth. Assuming William G. Mather to be a stockholder in the Pioneer Iron Company, and that the company is still in existence, if in fact Mather, for his own benefit and for his own purposes made use of the name of the Pioneer Iron Company as a cover for his acts, mined ore to be sold to other parties, or to be used in his own furnaces, a suit against him alone to enjoin him from such acts would not deprive him of his property without due process of law on the ground that the Pioneer Iron Company was not made party to the suit, and would involve no Federal question.

The Federal question set up by the amendment to Mather's answer, viz: That by reason of his being a stockholder in the Pioneer Iron Company, a decree declaring a forfeiture or

termination or expiration of the lease, or in any way affecting the rights of the Pioneer Iron Company, would deprive said Mather of his property without due process of law, because the Pioneer Iron Company was not made a party to the suit, was not considered or decided by the State Court.

The judgement of the Court was entirely and distinctly based on the ground that under the terms of the lease the defendants in the suit had no right to mine and remove ore from the lands, and had no right to make use of the Pioneer Iron Company as a dummy, or to make use of its name for the purpose of mining and removing such ore.

Sixth. The Supreme Court did not, as alleged in the assignments of error, terminate or cancel or declare a forfeiture of the lease executed by Charles T. Harvey to the Pioneer Iron Company, or adjudge the lease to have been destroyed or terminated, nor does the judgment or decree of the Court cut off, or destroy, or affect in any way, the franchises, rights or interests of the Pioneer Iron Company, nor in any manner destroy, diminish or affect the interests of the stockholders of that company. The Pioneer Iron Company is not in any manner deprived of or affected in its rights by suit or by other means to assert or determine its rights to mine ore under the lease. Not being a party to the suit, its rights and the rights of its stockholders remain as though the suit had not been instituted.

The determination of the decree of the Court is that the Iron Cliffs Company, the Cleveland Cliffs Iron Company, William G. Mather and Murray M. Duncan have no right to mine ore from the lands under the cover of the name of the Pioneer Iron Company, or by using that company as a dummy; that by the terms of the lease the mining of ore from the lands is limited to a personal right of the Pioneer Iron Company to mine such ore as it should actually convert into merchantable

iron at its own furnace, which existed when the lease was made, and which furnace the Iron Cliffs Company and the Cleveland Cliffs Iron Company dismantled and totally destroyed in 1894, and that the acts done by the defendants in the suit in exploring for and mining ore which are complained of and enjoined are not the acts of the Pioneer Iron Company, but are personal acts of the defendants in the suit which they have no right to do under the terms of said lease.

Seventh. It appearing that the judgment of the State Court was based upon such non-Federal and independent ground, the Court will not consider whether the decision of the State Court was sound or an unsound decision, and will dismiss the Writ of Error on the ground that the decision of the State Court as rendered by that Court did not involve a Federal question.

Klinger vs. State of Mo., 13 Wall., 257, at 263.
De Saussure vs. Gaillard, 127 U. S., 216, at 233, 234.
Dibble vs. Bellingham Bay Land Co., 163 U. S., 63, at 69
Howard vs. Fleming, 191 U. S., 126, at 135.
Israel vs. Arthur, 152 U. S., 355, at 362.

The determination and decision of the State Court upon facts which are found from the evidence in the case are conclusive, and will not be reviewed by this Court.

Dower vs. Richards, 151 U. S., 658, at 663.
Israel vs. Arthur, 152 U. S., 355.
Egan vs. Hart, 165 U. S., 188, at 189.
Allen vs. So. Pac. R. Co., 173 U. S., 479, at 489.
Telluride Power &c Co. vs. Railway Co., 175 U. S., 639, at 645.
Telluride Power &c Co. vs. Railway Co., 187 U. S., 569, at 584.

It is respectfully submitted that the Writ of Error should be dismissed.

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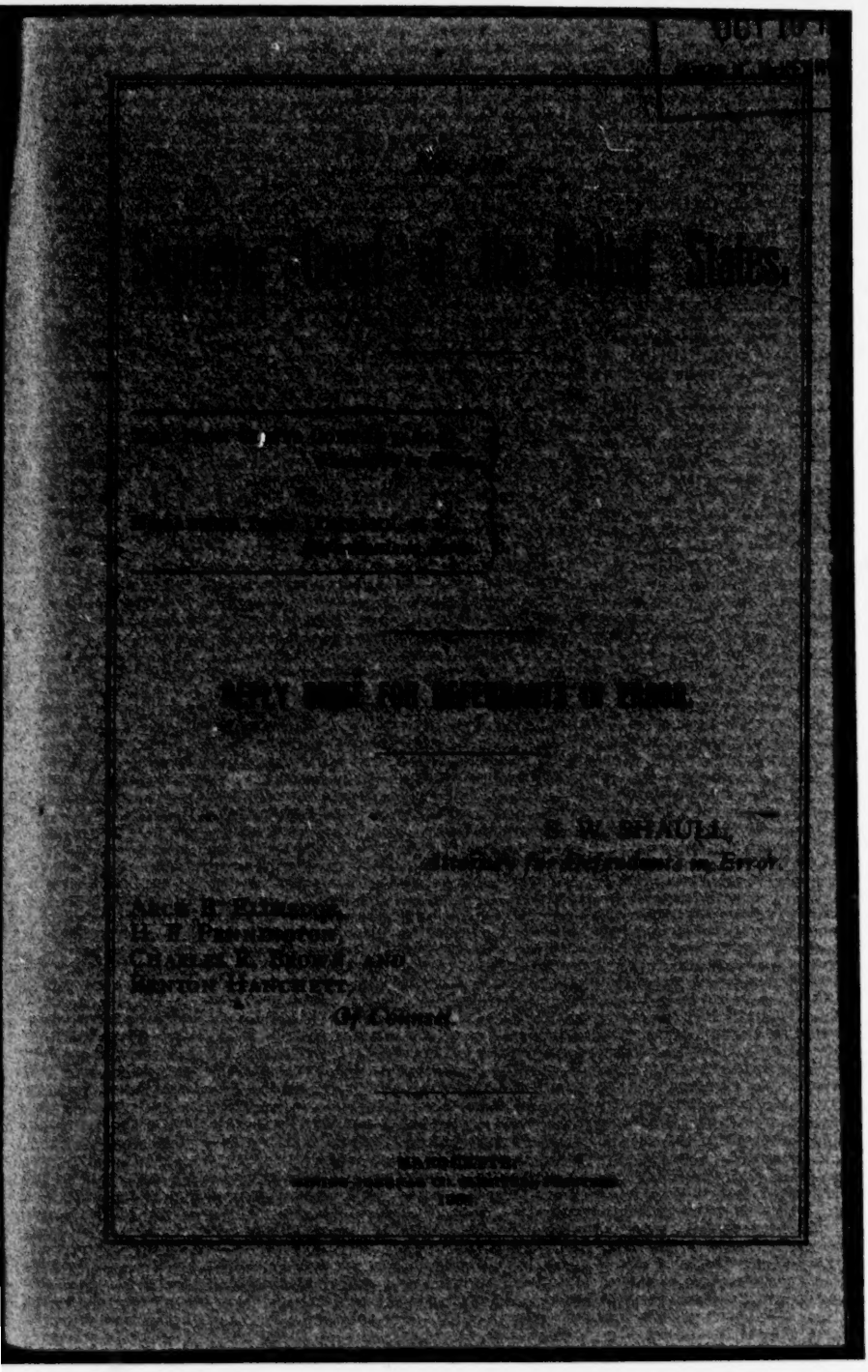

No. 173.

Supreme Court of the United States.

THE IRON CLIFFS COMPANY, et al,
Plaintiffs in Error,

vs.

NEGAUNEE IRON COMPANY, et al,
Defendants in Error.

REPLY BRIEF FOR DEFENDANTS IN ERROR.

I.

The statement is made on page 4 of brief of plaintiffs in error that the federal question here involved was raised in the State courts both on behalf of William G. Mather and the Iron Cliffs Company, who were and are the owners of the stock in the Pioneer Iron Company, and this claim is afterwards several times repeated in their brief. *We assert that the federal question was raised by William G. Mather, and by him alone.*

The Cleveland-Cliffs Iron Company, the Iron Cliffs Company, and William G. Mather answered severally in a single answer. (Record, p. 40.) After the proofs had all been taken, and on the 22nd of June, 1901, before the final sub-

mission of the case (Record, p. 49), leave was asked, and obtained, to amend this answer, and it was amended, so far as the federal question is concerned, in these words (Record, pp. 51-52):

> "And this defendant, William G. Mather, answering for himself, says he owns in his own right and as trustee 3,940 shares of stock of said company, and that if any decree be rendered in this case by the court in any way declaring a forfeiture or termination or expiration of said ninety-nine-year lease, or in any way affecting the rights of the Pioneer Iron Company thereunder, that said Pioneer Iron Company not being made a party to this proceeding, he, as such stockholder, and said Pioneer Iron Company, would thereby be deprived of his and its property without due process of law in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States, which forbids any state to deprive any person of life or liberty or property without due process of law, and this defendant avers that any decision or findings of the court in any way limiting, terminating, changing, modifying, annulling or diminishing the value of any of the rights of the Pioneer Iron Company under said ninety-nine-year lease, and as expressed therein, would be void and of no effect under said provision of said amendment to the Constitution of the United States."

It will be observed that the pretended quotation of the allegation on page 7 of plaintiffs in error's brief is a mere perversion of the record.

At page 30 of the brief of plaintiffs in error it is claimed, under the authority of Land & Water Co. vs. Ranch Co., 189 U. S., 177-180, that the federal question is sufficiently set up and claimed, if such question was fully considered in the opinion of the Court, and was ruled upon against plaintiffs in error, and it is argued that because William G. Mather, one of the plaintiffs in error, claimed a federal question because of his ownership of stock individually and as trustee, that this claim inured to the benefit of the Iron Cliffs Company, al-

though this company did not expressly, on its own behalf, make the claim.

It must be remembered that the bill of complaint (paragraph 13) avers that the corporate existence of the Pioneer Iron Company by the terms of its articles of association expired by limitation on the 2nd day of April, 1887, and the corporation became and was thereby dissolved, and that whatever rights, if any, the Pioneer Iron Company had under said lease were thereby terminated and extinguished, and such rights reverted and became vested in Charles T. Harvey and his grantees (Record, p. 7).

This allegation, as well as the allegations of paragraphs 16 and 18, to which the attention of the Court has already been called, were expressly denied by the answer of the Iron Cliffs Company (Record, para. 11, p. 41; para. 12, p. 42, and para. 14, p. 43), and, in addition, the Iron Cliffs Company, in these paragraphs, denies that the rights of the Pioneer Iron Company under the lease were terminated and reverted to Harvey, and alleges that the Pioneer Iron Company is not dissolved, and denies that it is not now in existence as alleged in paragraph 13. Neither paragraphs 7 and 16 of the bill, nor paragraphs 12 and 14 of the answer of the Iron Cliffs Company, were amended, so that, on the pleadings as they stood finally for the decision of the Court, there was a distinct averment on the part of the complainants that the charter of the Pioneer Iron Company had expired by limitation and the company had ceased to exist, and the answer of the Iron Cliffs Company made a clear and direct issue upon those facts.

Nowhere in the original or amended answer of the Iron Cliffs Company is the claim set up by that company of any rights as a stockholder of the Pioneer Iron Company.

The opinion of the Supreme Court does not state by whom the objection is made to the maintenance of the bill because the Pioneer Iron Company is not a party. The Court does not state the ground on which that objection is made, or the

reason of the objection, except as it appears in the answer of the Court made to the objection.

It must be borne in mind that various objections may and do exist to the maintenance of a suit, on the ground that some certain omitted party should be joined, and a federal question could not be raised on that ground unless the objection itself stated the federal question which was presented.

Now, in this case, the issue was distinctly made that the Pioneer Iron Company had ceased to exist, and the contention on the part of the defendants in error was that the Pioneer Iron Company was not a necessary party, and that, by necessity, the question of the existence of the corporation could only be tried *by not making it a party.*

It is this phase of the question which was considered by the State Supreme Court in the opinion upon this point.

We refer the Court to the language of the opinion hereafter quoted (Post., pp. 6 and 7), and to paragraphs 16 and 18 of the bill (Post., pp. 9, 10 and 11).

Therefore, in order that it should appear from the opinion that a federal question was raised on behalf of the Iron Cliffs Company, it was necessary that it should appear in the opinion that the objection that the Pioneer Iron Company was not made a party was put by the Iron Cliffs Company *upon the ground that it would be deprived of its property without due process of law.*

Life Ins. Co. vs. Kirchoff, 169 U. S., 103, at 109, 110, 111.
Kipley vs. Illinois, 170 U. S., 182, at 186.
Levy vs. Superior Court, 167 U. S., 175, at 177.
Oxley Stave Co. vs. Butler Co., 166 U. S., 648, at 653.
Keokuk, etc. Co. vs. Illinois, 175 U. S., 626, at 633, 634.
Mich. Sugar Co. vs. Michigan, 185 U. S., 112, at 113, 114.
Chapin vs. Fye, 179 U. S., 127, 130.

II.

It is asserted on page 11 of the brief of plaintiffs in error that in 1889, and subsequently, under authority of the Constitution and laws of Michigan, the Pioneer Iron Company took the necessary steps to, and did, duly re-organize, thereby extending its corporate existence for a second period of thirty years. It is further asserted that all this is shown by the record without contradiction; first, by the amendment to complainant's bill (Record, pp. 49-50), and, second, by certified copies of the articles of association showing such re-organization.

The record referred to shows that, at the same time that the defendant Mather amended his answer for the purpose of raising a federal question, the complainants amended their bill so as also to set up a federal question by alleging that the defendants (the plaintiffs in error) *claim and pretend* that the Pioneer Iron Company has been re-organized, that by such re-organization it has been revived, etc., and then charge that if the acts of the Michigan Legislature of 1889 and 1899 shall be held to have any such effect, they are unconstitutional under the provisions of the Fourteenth amendment to the Federal Constitution.

The position of the defendants in error upon the question of the effect of the re-organization of the Pioneer Iron Company has, from the beginning, been this and this only:

1st. That the Pioneer Iron Company's charter expired April 2, 1887; that it then died; that the Constitution of Michigan prohibited the re-organization of any corporation and so continued to prohibit until 1889.

2nd. That under the constitutional amendment allowing certain corporations to re-organize, and the act of the legislature authorizing such re-organizations, the Pioneer Iron Company was not a corporation which could re-organize, for the reason that for more than ten years next immediately pre-

ceding the passage of that act, it had not done the business for which it was incorporated.

3rd. That the attempted re-organization of the Pioneer Iron Company was void for the further reason that the requirements of the statute for re-organization had not been complied with, and, further, because such attempted re-organization was a mere fraudulent attempt on the part of the plaintiff in error, the Iron Cliffs Company, in simulated compliance with law to create a dummy corporation for its own uses and purposes and in fraud of the rights of defendants in error.

4th. That if such re-organization was effective to create a corporation, it was a new corporation, and not *the corporation* contracted with in the ninety-nine-year instrument, nor its *"corporate successor"* within the meaning of that instrument.

That these claims of the defendants in error were in issue, and some of them found in their favor by the Supreme Court, is shown by the opinion of that court (Record, p. 569):

> "Under the allegations of the bill, and *as well under the proofs*, the Pioneer Iron Company is used as a 'dummy' for the benefit of the defendant companies. The defendants own, and have owned for many years, all its capital stock, its furnaces and property, both real and personal. They have managed all its affairs, and for their own benefit. All its accounts, if any have been kept in the name of the Pioneer Iron Company, have been kept upon the books of the defendants. The defendants refused, upon the trial, to produce the books of the Pioneer Iron Company, or their own books showing the accounts. Some of its officers having charge of the books were produced as witnesses and testified to the above facts. Under these circumstances these defendants cannot escape the consequence of their acts done in the name of the Pioneer Iron Company for their own benefit. Admitting that the Pioneer Iron Company is not a dead corporation, yet all its property, franchise and rights are owned by the defendant companies so far as the rights under the

ninety-nine-year lease are concerned, and are fully represented by those now before the court. The theory of the complainants, as stated in their bill, is, that the Pioneer Iron Company is a dead corporation; its charter expired by limitation April 2, 1887; and that no steps were taken for some time thereafter to re-organize the corporation under the amendment to the Constitution and the law; and that that action was wholly invalid. * * * * Complainants (defendants in error) could not well *have* made the Pioneer Iron Company a party defendant without recognizing it as an existing corporation. Its existence was in issue, and, having expired by limitation of its charter, the burden of proof was upon the defendants to show a valid re-organization so as to make it the successor of the company within the terms of the ninety-nine-year lease."

Again in the opinion (Record, p. 576) the Court says:

"The charter of the Pioneer Iron Company expired by limitation April 2, 1887. The Constitution, at the date of its organization and at the expiration of its charter, expressly prohibited the organization of corporations beyond the period of thirty years. No provision then existed, either by the Constitution or by the statute, authorizing a re-organization of corporations which had expired by limitation. A constitutional amendment was adopted in 1889 authorizing the legislature to provide by general laws for one or more extensions of the term of such corporations, and also for the re-organization 'for a further period not exceeding thirty years of such corporations whose terms have expired by limitation, on the consent of not less than four-fifths of the capital.' Pursuant to this authority, the legislature in 1889 passed an act authorizing such re-organization (2 Comp. Laws, Sec. 7035). Very important questions are raised by counsel as to the effect of this re-organization statute, the validity of the act of re-organization by the Pioneer Iron Company; as to whether the Pioneer Iron Company was in position to avail itself of this statute, and also the effect upon the ninety-nine-year lease, should the re-organization be held to be valid. Inasmuch, however, as these questions are not essential to a decision of the case, we refrain from determining them."

As to the so-called three years statute, Section 8534, quoted by plaintiffs in error at page 8 of their brief, the position of the defendants in error was that this provision was only applicable to corporations organized for a less period than thirty years; that if it should be construed to extend the life of a corporation for thirty-three years, it would be in direct conflict with the Constitution of the State as it existed prior to 1889. It was further claimed that even if the three years statute should be construed to continue a corporation for thirty-three years, it did not help the Pioneer Iron Company, which did not attempt to re-organize *until after the expiration of a thirty-three year period.*

The statement, then, of the re-organization of this company and its status, contained in plaintiffs in error's brief, from pages 11 to 13, is entirely unauthorized by the record *Every fact as to its existence as a corporation was in dispute*

The claim found at page 12 of plaintiffs in error's brief, that the State of Michigan has never questioned the existence of the Pioneer Iron Company, is based upon the assumption that a corporation cannot expire by charter limitation, unless the State takes action to prove its death.

III.

The main proposition of plaintiffs in error's brief is, that the property of the Pioneer Iron Company is taken without due process of law, because, while it is not made a party to the litigation, its officers and agents are restrained from trespassing upon the lands of the defendants in error. This is the only basis for the claim of a federal question.

The theory of the bill of complaint is so thoroughly set forth in our brief already filed, and in the opinion of the Supreme Court of Michigan, that a further repetition of it seems unnecessary. We desire, however, to call the attention of the Court to two paragraphs in the bill which throw light upon

the prayers for relief and the decree. These paragraphs are 16 and 18, and are as follows:

> Sixteenth. Your orators show that recently and within the year last past, the said Iron Cliffs Company and said Cleveland-Cliffs Iron Company, recognizing your orator's rights in said lands free from any claims or rights under said lease of date September 17th, 1857, on the part of said Pioneer Iron Company, applied to your orators, through their president, William G. Mather, to obtain a lease of said lands or a portion thereof, under which the lessees should have the right to mine and remove the iron ore therefrom, which application your orators refused to grant; and failing to secure the right from your orators to mine the ore from said lands by means of such proposed lease, the said Iron Cliffs Company and said Cleveland-Cliffs Iron Company and their officers, directors and stockholders have fraudulently combined and planned to obtain the iron ore from said lands against the rights of your orators and without payment therefor, by the means following: They falsely and fraudulently claim and pretend, that said Pioneer Iron Company still exists and owns and holds said lease, notwithstanding said Pioneer Iron Company expired by the limitation of its term and was dissolved and ceased to exist in the year 1887 as hereinbefore stated; and they make use of the name of said Pioneer Iron Company as a cover under which and by means of which they seek to carry on the work of mining and removing ore from said lands, and they are now actually engaged in carrying out said plan, and to that end have given notice under the name of the Pioneer Iron Company to your orators, of entry upon the following described lands under said lease, to-wit: The east half of the southwest quarter and the south half of the southeast quarter of section six, the north half of the northeast quarter of section seven, and the northwest quarter of section eight, all in town forty-seven north of range twenty-six west in said County of Marquette; and by their agents, employes and servants, have entered upon said lands against the protest of your orators and are sinking test-pits, tearing up the soil and exploring said lands for iron ore, and are preparing to mine and remove and are mining said ore

therefrom. And your orators aver that the said agents, employes and servants of said Iron Cliffs Company and of said Cleveland-Cliffs Iron Company as aforesaid, will continue to carry on the work of exploring and mining and removing the ore from said lands unless restrained therefrom by the order and decree of this Honorable Court.

Eighteenth. Your orators show that the officers and agents of said Iron Cliffs Company and said Cleveland-Cliffs Iron Company, who are engaged in and carrying out the said scheme and plan to defraud your orators and to mine and remove the iron ore from said lands under the cover and by the use of the name of the Pioneer Iron Company, are, so far as they are known to your orators, William G. Mather, who is the president of said Iron Cliffs Company and also president of said Cleveland-Cliffs Iron Company, and Murray M. Duncan, who, your orators are informed and believe, and upon information and belief charge the truth to be, is the managing agent of the said Iron Cliffs Company and of the said Cleveland-Cliffs Iron Company in charge of said work upon said lands. And your orators aver the rights and privileges, if any were granted in said lease, have long since been terminated and extinguished. But the said defendants claim and pretend that under the provisions of Act 142 of the Public Acts of 1889 of the legislature of the State of Michigan, and under the provisions of Act No. 60 of the Public Acts of 1899 of the Legislature of the said State, said Pioneer Iron Company has been re-organized, and that, by reason of said acts, said re-organized company has thereby been revived, and that the right to mine ore free of royalty under said lease from said lands has thereby become revived and vested in said Pioneer Iron Company. And your orators aver and claim that if said statutes of 1889 and 1899 shall be held to apply to and to authorize the re-organization of the Pioneer Iron Company, and shall be held to re-invest said Pioneer Iron Company with said lease, and the right to mine ore from said lands under said lease, your orators would thereby be deprived of their property without the process of law, in violation of the provisions of the Fourteenth amendment of the Constitution of the United

> States, which forbids any state to deprive any person of life, liberty or property without due process of law; and your orators claim that said statutes so applied are void under said provisions of said amendment."

The substance of the prayers for relief are correctly set forth in the brief of plaintiffs in error at page 5, except that no mention is made of the usual general prayer for relief which this bill contained.

The decree of the Circuit Court for Marquette County is as follows:

> "Now, therefore, in consideration of the foregoing findings and determinations of the court concerning the particular matters set forth in the complainants' bill of complaint, it is ordered, adjudged and decreed that the defendants, their counsellors, attorneys, solicitors and agents, and each and every of them, whether acting in their individual or representative capacity, immediately vacate and remove from the lands described in the bill of complaint, and that they and each of them be and they hereby are perpetually enjoined from further entering upon the said lands of the complainants for the purpose of exploring for or taking therefrom any minerals or iron ore, or for any purpose whatever, without the consent and authority of the complainants" (Record, p. 558).

This is the only decree which the Supreme Court affirmed (Record, p. 577).

This decree was preceded by certain findings of fact, but these findings of fact were *not affirmed by the Supreme Court of Michigan, nor was the opinion of the Circuit Judge affirmed or adopted. On the contrary, the Supreme Court gives its own reasons for its findings, finds its own facts, and expressly refused to pass upon numerous questions which the Circuit Judge did pass upon.*

The claims, therefore, of the defendants in error in their arguments in the Circuit Court or Supreme Court, or the findings of fact of the Circuit Judge, or his conclusions of law as shown by his opinion, *have no tendency whatever to estab-*

lish the existence of a federal question in this case, or to extend the operation of the decree rendered.

The statement at page 12 of their brief that there was no cessation by the Pioneer Iron Company of an active and extensive business, not only before but after the year 1889 up to the present time, is not founded on the record, and the contrary is directly found by the Supreme Court (Record, pp. 565, 569 and 575).

The decree is that the plaintiffs in error be enjoined from trespassing upon and removing ore from certain lands, and the Supreme Court simply affirmed that decree, *it did not adopt the reasons put forth by the Circuit Judge in arriving at that decree.*

Where the decree of the court below is correct the same will not be disturbed even if a wrong reason be assigned therefor. This is elementary law.

We are not dealing with the case on the judgment rendered by the Circuit Court, and have no concern with it, except as we go to it to ascertain the decree of the Supreme Court.

The Supreme Court found that under the proofs the Pioneer Iron Company is used as a *dummy for the benefit of the defendant companies*, and that all its properties, franchises and rights are owned by the defendant companies, so far as the rights under the ninety-nine-year lease are concerned, and that the acts of trespass complained of are done by the defendants in the name of the Pioneer Iron Company for their own benefit.

With these findings in view is it not clear that the decree does not restrain the Pioneer Iron Company or its agents or servants in any capacity, and *only restrains the defendant corporations and their agents and servants*, whom the Supreme Court found were in fact committing the trespasses alleged? It must be remembered that the defendant Mather was president of both the defendant companies (Record, p. 431), and that the defendant Duncan is their general manager and

agent in active charge of the work and was actually trespassing on these lands (Record, p. 568).

Clearly, the words in the decree "Whether acting in their individual or representative capacity" had reference to this situation, and in no way referred to the representatives of the Pioneer Iron Company.

The position of the defendants in error is, in brief, this:

The Supreme Court of Michigan found certain facts and gave certain reasons for its decree. With its findings of fact and its decree we are alone concerned in this court.

That the Pioneer Iron Company was dead by expiration of its charter, and these defendants were, under the shield of its name, fraudulently asserting a right to mine and were actually mining ore, royalty free, from complainants' lands, under an instrument which made that right personal to the dead corporation and unassignable.

If it is still in existence, the claim is that these defendants are wrongdoers, using that corporation as a dummy, and seeking under its name, as a cover to their fraudulent scheme, as individuals and not in any sense as stockholders, officers or agents of the Pioneer Iron Company, to mine and remove the ore. The question then presented here is this—had the Court jurisdiction from the evidence to decree that these plaintiffs in error had no right to mine on that land, the Court having found as *a fact* that in their acts of mining they *did not* act for or represent the Pioneer Iron Company?

IV.

The contention of the plaintiffs in error in this case seems to be that no instrument could be construed, no fact determined, in order to decide the controversy between the parties to this suit, without necessarily infringing the rights of the Pioneer Iron Company and taking its property.

The ninety-nine-year lease, so-called, could be construed by the Michigan Court in any proceeding where it was called in question, and that construction would be binding upon the defendants in that suit, although not binding upon the Pioneer Iron Company. The Supreme Court of Michigan did construe the ninety-nine-year instrument, and held that the rights granted by it were personal to the Pioneer Iron Company, were unassignable, and were appurtenant to a certain furnace or furnaces located at Negaunee. The Supreme Court found that these furnaces were by the plaintiffs in error destroyed (Record, p. 565), and that, nevertheless, the plaintiffs in error, using the Pioneer Iron Company's name as a mere shield, were undertaking to remove ore from the lands of the defendants in error (Record, p. 569), for use in other furnaces.

Now, when it is considered that the Supreme Court also found that the defendants were using the Pioneer Iron Company as a dummy, and were mining for their own benefit, can it be doubted that upon this construction of the instrument, and the found facts, the Court had a right to enjoin these defendants from trespassing on the complainants' lands, and can it be doubted that such a decision neither interfered with the rights nor took the property of anyone not properly before the Court?

V.

Upon the bill and answer in this case, it would have been competent for the Supreme Court of the State of Michigan to hold that the Pioneer Iron Company, whose charter rights are found to have expired April 2, 1887, had not been re-organized, or, if it had been re-organized, that it was *not the successor* of the Pioneer Iron Company mentioned in the ninety-nine-year lease, and then to have restrained these de

fendants from attempting to exercise rights which the Pioneer Iron Company itself could not exercise. If so, then the Courts of Michigan had jurisdiction of the subject matter and of the parties necessary to render a decree, and this Court is only interested in determining whether that decree invades the rights of any person not a party to the litigation.

The Supreme Court has found certain facts, and from those facts has decreed an injunction against the defendant corporations and their officers and agents.

The findings of fact bind no one who is not a party to the litigation, and the decree itself does not bind nor purport to bind any person who was not a party to the litigation, **nor does it reach any property whatever.**

The entire argument of the plaintiffs in error is based upon the proposition that no decree of any kind was possible in this case, unless the Pioneer Iron Company was made a party thereto.

The proposition (disputed in the brief of plaintiffs in error) that the legal existence of a corporation whose charter has once expired may be brought in question collaterally, is abundantly established by authority.

Morwitz, in his work on Private Corporations, Sec. 1003, says:

"If the charter of a corporation limits its existence to a definite period of time, the franchise or right to exist would expire at the time limited, and ordinarily the agreement of the shareholders would expire also. Hence, the corporation would cease to exist de facto, as well as de jure, at the time fixed by the charter, just as a limited partnership would cease to exist at the expiration of the time fixed by the articles of copartnership."

When a corporation is brought to an end by lapse of time, it would seem that any exercise of corporate powers may be questioned collaterally.

People vs. Manhattan Co., 9 Wend., 382.
Morgan vs. Williamsburg Ins. Co., 3 Ind., 285.
Willson vs. Tosson, 12 Ind., 285.

In Bradley et al vs. Reopell, 133 Mo., 545, it is held that:

> "After a corporation's period of existence has expired it ceases to be a corporation *de facto* and cannot execute a valid conveyance; and one, claiming by adverse possession and not being party or privy to such deed, may question its validity as a link in plaintiff's chain of title in an action of ejectment, by showing by the law that gave the corporation existence, that it was, at the time of making the deed, incapable of executing a valid conveyance."

In Kreitz vs. Paola Town Co., reported in 20 Kansas, at page 397, the facts showed that the defendant, Kreitz, a member of the company, sold lots after the expiration of the corporate life of the company, and, upon suit brought against him for the amount claimed to be due the corporation ($19,000.00) the defendant denied the existence of such corporation, and the court held that:

> "Although [the defendant as] a member of the company after the year 1865, might have sold the lots belonging to the company and received the proceeds thereof, and in doing so might have dealt with the company as a corporation and recognized its existence as such, still, in an action brought against him for such proceeds and brought in the name of the company as a corporation, he would not be estopped from setting up the defense that the company had, prior to that time, ceased to exist as a corporation, and therefore it no longer had capacity to sue its members as such; for there is no rule of equity or public policy authorizing an estoppel to be interposed in such case, but, on the contrary, it would be against equity and public policy."

An accounting between the members held to be the proper remedy.

In the case of Carey vs. The Cincinnati R. R. Co., 5 Iowa, 357, the Court say:

> "Where a corporation, by its own acts, has ceased

to exist, or where it has suffered acts which destroy its existence, it is as fully and entirely dissolved as if declared so by the sentence of a competent court."

"Where a company has ceased to have a corporate existence, as a legal and necessary consequence of certain acts, and a party claims that he has been injured thereby, or that certain benefits result to him in consequence of such dissolution, he may, by averring these acts, have his remedy, and need not, in the first instance, institute a proceeding and have it declared that the existence of the corporation had terminated."

The complainants charge that the Pioneer Iron Company, having had corporate life, lost it. Defendants deny that this is the legal effect of the records. The records, when appealed to, showed no articles signed or acknowledged.

What acts of complainants do the records disclose which "make it legally unjust to forbid its denial?"

Irregularities or defects *in the mode of performing the acts prescribed by law as* constituting a corporation cannot be set up by a private individual, *but he may show that those acts have not been performed at all.*

Doyle vs. Mizner, 42 Mich., 337.
Droville and V. Ry. Co. vs. Plumas Co., 37 Cal., 354.

VII.

The facts as to the ownership of the Pioneer Iron Company's stock by William G. Mather are fully discussed in our original brief on this motion, and the finding by the Supreme Court was as there stated, that the entire capital stock was owned by the Iron Cliffs Company (Record, pp. 575, 569).

CONCLUSION.

The more the decree complained of is examined, the more apparent it becomes that it does no more than enjoin certain wrong-doers who were before the Court from committing a continuing trespass. It is clear that no property was taken nor the rights of any person not before the Court interfered with by that decree. It is equally clear that the decree could not bind the property or rights of any person not present or sufficiently represented in this litigation.

Greiner vs. Klein, 28 Mich., 12, at page 18.
Smith vs. Williams, 44 Mich., 240, at pages 243 and 4.
Jenness vs. Smith, 58 Mich., 281, at page 285.

We submit that the Court had jurisdiction of the parties and of the subject matter, and that, under the findings of fact made by the Supreme Court of Michigan, it was entirely proper to restrain the plaintiffs in error from removing ore from the land in question **for their own benefit,** no matter what subterfuge they may have attempted to use in order to accomplish their illegal design.

Leigh vs. Kewanee Mfg. Co., 127 Fed. 990, at 991.
Anthony vs. Am. Glucose Co., 146 N. Y. 407 (41 N. E. Rep. 23, at 25).

The motion should be sustained with costs to defendants in error.

Respectfully submitted,

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Supreme Court of the United States.

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JAMES H. McKENNEY, Clerk.

IRON CLIFFS COMPANY,
THE CLEVELAND CLIFFS IRON COMPANY,
WILLIAM G. MATHER, and
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Plaintiffs in Error.

vs.

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EDWARD M. BREITUNG, and
MARY KAUFMAN,
Defendants in Error.

No. 173.

BRIEF IN BEHALF OF THE DEFENDANTS IN ERROR.

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Defendants in Error.

BREIF IN BEHALF OF THE DEFENDANTS IN ERROR.

The suit is brought by the Defendants in Error to enjoin the commission of trespass in mining and removing ore from mineral lands owned by them.

The Bill of Complaint states this case, viz: "The lands in question were originally owned by James L. Reynolds, who, on the 26th of February, 1857, executed a conveyance of said lands to Charles T. Harvey, with a reservation of certain rights in said lands to said Reynolds. On the 17th day of September, 1857, Charles T. Harvey executed a mining lease

of the lands to the Pioneer Iron Company for the term of ninety-nine years, "for the sole purpose of mining and quarrying at its own expense such ore and marble as may be found thereon, and subject to the provisions hereafter mentioned, viz: *Provided* it shall not quarry, mine or remove any ores on said lands except such as it shall actually convert into merchantable iron in its own furnaces or forges. * * * The rights and easements above mentioned shall descend to the corporate successors of the party of the second part, but not to its assigns." The lease is Exhibit C, Record pp. 18 19, 20.

The Pioneer Iron Co. was a corporation organized under the laws of the State of Michigan on the 3rd day of April, 1857, the term of the existence of which was, by its Articles of Association, limited to the term of thirty years. The Articles of Association are Exhibit B, Record, pp. 16 and 17.

The rights and interest in said lands of said Harvey and Reynolds, subject to said lease, were acquired by the complainants. At the time of making said lease, the Pioneer Iron Company contemplated constructing a furnace or forges for the manufacture of iron, and said lease was made with the intention that only such ores should be removed from said lands as should be actually converted by said Pioneer Iron Company in the furnaces and forges then being constructed.

On or about the first of January, 1866, the Pioneer Iron Company ceased to do business and on the 10th of March, 1866, the Pioneer Iron Company leased to the Iron Cliffs Company, a corporation organized under the laws of the State of Michigan, for the period of ten years, its entire real and personal property, consisting of all its iron works, buildings, lands and rights, and has not since that date mined or operated under said lease, but from that date abandoned the lease. Some time prior to January 1st, 1873, the Iron Cliffs Company became the owner of all the capital stock of the Pioneer Iron

Company, and said stock since that time has been held in the names of different individuals for the uses and purposes of said Iron Cliffs Company, and the certificates of stock representing said capital stock of the Pioneer Iron Company have been and are now held in the names of different individuals who are officers, directors stockholders, agents or servants of the Iron Cliffs Company, and of the Cleveland Cliffs Iron Company, a corporation organized under the laws of the State of West Virginia, which two corporations have been operating together in the conduct of their business, and whose officers and agents are in the main the same persons. Said stock is held, as aforesaid, for the use and benefit of said Iron Cliffs Company and said Cleveland Cliffs Iron Company.

On the 2nd of April, 1887, the corporate existence of the Pioneer Iron Company, by the terms of its Articles of Association, expired by limitation, and said corporation became thereby dissolved, and whatever rights the Pioneer Iron Company held under and by virtue of said lease were terminated and extinguished, and reverted to and became invested in said Charles T. Harvey and his assigns.

From and after the 10th of March, 1866, the furnaces and forges of the Pioneer Iron Company, in which, by the terms of said lease, dated September 17, 1857, it was contemplated that the ore therein referred to should be manufactured into iron, were never operated by said Pioneer Iron Company, but were operated by the Iron Cliffs Company and its lessees for a number of years thereafter, but said furnaces and forges were entirely dismantled and destroyed many years ago, and no longer exist. Recently, and within the year last passed, the Iron Cliffs Company and Cleveland Cliffs Iron Company, recognizing the complainants' right in said lands, free from any claims or rights under said lease of September 17, 1857, on the part of the Pioneer Iron Company, applied to the com-

plainants through their president, William G. Mather, to obtain a lease of said lands, or a portion thereof, under which the lessees should have the right to mine and remove iron ore therefrom, which application the complainants refused to grant. The Bill then states, paragraphs 16, 17 and 18, pp. 8 and 9, as follows: "And failing to secure the right from your orators to mine the ore from said lands by means of such proposed lease, the said Iron Cliffs Company and said Cleveland Cliffs Iron Company, and their officers, directors and stockholders have fraudulently combined and planned to obtain iron ore from said lands against the rights of your orators and without payment therefor, by the means following:

They falsely and fraudulently claim and pretend that said Pioneer Iron Company still exists and owns and holds said lease notwithstanding said Pioneer Iron Company expired by the limitation of its term and was dissolved and ceased to exist in the year 1887 as hereinbefore stated; and they make use of the name of said Pioneer Iron Company as a cover under which and by means of which they seek to carry on the work of mining and removing ore from said lands, and they are now actually engaged in carrying out said plan, and to that end have given notice under the name of the Pioneer Iron Company to your orators, of entry upon the following described lands under said lease. (Describing lands.) And by their agents, employes and servants, have entered upon said lands against the protest of your orators and are sinking test pits, tearing up the soil and exploring said lands for iron ore, and are preparing to mine and remove and are mining said ore therefrom. And your orators aver that the said agents, employes and servants of said Iron Cliffs Company and of said Cleveland Cliffs Iron Company, as aforesaid, will continue to carry on the work of exploring and mining and removing the ore from said lands unless restrained therefrom by the order

and decree of this honorable Court. "17th. And your orators show that all the lands hereinbefore specially described are mineral lands and have therein large deposits of valuable iron ore, and that the chief value of said lands consists in the iron ore situated therein, and the mining and removing therefrom of said iron ore by the defendants would take from said lands their principal value and would work and would be for your orators an irreparable injury." "18th. Your orators show that the officers and agents of said Iron Cliffs Company and said Cleveland Cliffs Iron Company who are engaged in and carrying out the said scheme and plan to defraud your orators and to mine and remove the iron ore from said lands under the cover and by the use of the name of the Pioneer Iron Company, are, so far as they are known to your orators William G. Mather, who is the president of said Iron Cliffs Company and also president of said Cleveland Cliffs Iron Company, and Murray M. Duncan, who your orators are informed and believe, and upon information and belief charge the truth to be, is managing agent of the said Iron Cliffs Company and of the said Cleveland Cliffs Iron Company. That said Duncan and said Mather and their confederates, as aforesaid, well know that the corporate existence of the said Pioneer Iron Company has long since been terminated and said corporation dissolved, and that the rights and privileges granted in said lease of date September 17, 1857, have reverted to said Charles T. Harvey and his grantees; notwithstanding which said Duncan, under the pretense that he is acting as agent of said Pioneer Iron Company, is engaged in superintending and directing said work which is being done on said lands by various persons who are laborers acting under his orders." The Bill states that the claims of said Duncan, Mather, the Iron Cliffs Company and the Cleveland Cliffs Iron Company under the name of the Pioneer Iron Company

constitute a cloud upon complainants' title. Said Mather, Duncan, the Iron Cliffs Company, and the Cleveland Cliffs Iron Company are made defendants, and the Bill prays "that said William G. Mather, the said Iron Cliffs Company, and the said Cleveland Cliffs Iron Company, and their officers, directors, agents, attorneys and employes, be perpetually enjoined and restrained from setting up in the name of the Pioneer Iron Company or in other manner, any right or title under said lease from said Charles T. Harvey to said Pioneer Iron Company, in or to your orators' said lands and entering upon or removing from said lands any iron ore or marble, and for such other and such further relief as to the Court shall seem meet and proper."

THE ANSWERS TO THE BILL OF COMPLAINT.

Murray M. Duncan answers separately, (Record, p. 30), and admits the execution of said lease to the Pioneer Iron Company, denies that the Pioneer Iron Company is dissolved, and denies that any of the rights, interests and property of the Pioneer Iron Company under said lease were terminated or reverted to Charles T. Harvey or his grantees, and avers that said company is still the owner of said property, rights and interest granted under said lease. He admits that he, as agent for the Pioneer Iron Company, is actively engaged in conducting mining operations on some of the lands covered by said lease for the purpose of discovering ore. That the

Pioneer Iron Company acts through him as its agent in personal charge of the work in endeavoring to discover said ore, and that if ore is discovered in sufficient quantities for mining, the Pioneer Iron Company proposes to continue such exploration until it finds ore in said lands, and further answering says, "that he has no personal interest in the matters set forth in said Bill to any extent whatever, but that in all his actings and doings he is merely the agent of said Pioneer Iron Company, and the agent only of said Pioneer Iron Company, and of no other corporation or person whatsoever, and that no other person or corporation except said Pioneer Iron Company is engaged in or has directed the actings and doings of this defendant as aforesaid, or of any of the operations and explorations being conducted on said lands."

The Iron Cliffs Company, the Cleveland Cliffs Iron Company, and William G. Mather answering together, (Record, p. 40), severally say that they admit the execution of said lease of the Pioneer Iron Company, and denying all the allegations in paragraph 16 of the Bill, say that the entry and exploring operations on the land were made and have been carried on by the Pioneer Iron Company, and none others, and deny any collusion or combination as alleged in said paragraph 16 of the Bill, and deny that the charter of the Pioneer Iron Company had expired. They admit that the Pioneer Iron Company, through its agents and officers, have continued to carry on the explorations, and that operations were begun and have been carried on by the Pioneer Iron Company by the direction of William G. Mather, as one of the officers of the Pioneer Iron Company. By paragraph 19, p. 44, the Answer says, "and these defendants further answering say they have no personal interest in any of the matters set forth in said Bill, except as they, *or some of them*, may be stockholders of said Pioneer Iron Company, or as an officer or agent thereof."

After the proofs had been taken in the case under the above pleadings and upon the cause coming on for hearing the following amendments were made. (Record, p. 49):

The Bill of Complaint was amended by adding to paragraph 18 of the Bill as follows, (Record, p. 50): "The said defendants claim and pretend that under the provisions of Act 142 of the Public Acts of 1889 of the legislature of the State of Michigan, and under the provisions of Act No. 60 of the Public Acts of 1899 of the legislature of the said State said Pioneer Iron Company has been reorganized, and that by reason of said Acts said reorganized company has thereby been revived, and that the right to mine ore free of royalty under said lease from said lands has thereby become revived and vested in said Pioneer Iron Company.

The defendants' answers were amended by adding after paragraph 16 in each of the answers, the following, (Record, p. 51): "These defendants admit that in April, 1901, said Pioneer Iron Company has caused to be filed in the office of the Secretary of State of Michigan, and the County Clerk of Marquette County, certain amended and perfected Articles of Association of said company in renewal of organization or reorganization of said company and that said Pioneer Iron Company claims to be under said filings as well as previous filings, a valid corporation, and to have been properly reorganized under the laws of this State under the acts as set forth in the amended Bill of Complaint or otherwise, and that these defendants are informed and believe that the said Pioneer Iron Company is perfectly organized as a corporation under the law of the State of Michigan, and is now existing as such and is in all respects a valid and existing corporation under said law."

The further amendment of William G. Mather alone answering for himself was made, (Record, p. 51) *as follows*

"And this defendant, William G. Mather, answering for himself, says he owns in his own right and as trustee, 3940 shares of stock of said company, and that if any decree be rendered in this case by the Court in any way declaring a forfeiture or termination or expiration of said ninety-nine year lease, or in any way affecting the rights of the Pioneer Iron Company thereunder, that said Pioneer Iron Company not being made a party to this proceeding, he as such stockholder, and said Pioneer Iron Company would thereby be deprived of its and his property without due process of law in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States, which forbids any State to deprive any person of life or liberty or property without due process of law, and this defendant avers that any decision or findings of the Court in any way limiting terminating, changing, modifying, annulling, or diminishing the value of any of the rights of the Pioneer Iron Company under said ninety-nine year lease, and as expressed therein would be void and of no effect under said provision of said amendment of the Constitution of the United States."

I.

The Writ of Error should be dismissed for want of jurisdiction.

The law has been stated and many times repeated that to give the Court jurisdiction of a writ of error to a State Court, "It must appear affirmatively not only that a Federal question was presented for decision by the State Court, but that its decision was necessary to the determination of the cause, and that it was decided adversely to the party claiming a writ under

the Federal laws or Constitution, or that the judgment as rendered ~~should~~ not have been given without deciding it; that where the record discloses that, if a question has been raised and decided adversely to a party claiming the benefit of a provision of the Constitution or laws of the United States another question, not federal, has also been raised and decided against such party, and the decision of the latter question is sufficient, notwithstanding the Federal question, to sustain the judgment, this Court will not review the judgment."

Harrison vs. Morton, 171 U. S., 38 at 47.
Pierce vs. Somerset Railway, 171 U. S., 641.
Cook County vs. Calumet &c. Co., 138 U. S., 635 at 651.
White vs. Leovy, 174 U. S., 91 at 96.
Remington Paper Co. vs. Watson, 173 U. S., 443.
McQuade vs. Trenton, 172 U. S., 636 at 639.
Chappell Chemical Co. vs. Sulphur Mines Co., 172 U. S., 465, 471.
Capital Bank vs. Cadiz Bank, 172 U. S., 425.
Giles vs. Teasley, 193 U. S., 146 at 160.
Eustis vs. Bolles, 150 U. S., 361 at 369, 370.
California Powder Works vs Davis, 151 U. S., 389 at 393.

In this case a question not federal was raised, and was decided against the plaintiffs in error, which is sufficient to sustain the judgment. Briefly the case is this:—The Defendants in Error became the owners of the lands in question, which were subject to the lease for the term of ninety-nine years made on September 17, 1857, by Charles T. Harvey to the Pioneer Iron Company of the right limited to the Pioneer Iron Company exclusively, without power to transfer, to mine such ore as the Company should, itself, actually convert into merchantable iron in its own furnaces or forges which were then in process of construction.

The Pioneer Iron Company was organized on the 3rd day of April, 1857, for the limited term of thirty years. On March 10, 1866, said Company made a lease for ten years to the Iron Cliffs Company of all its property, iron works, and buildings, and itself ceased to do business and from that date has not mined or operated under such lease of September 17, 1857, but abandoned the lease. Prior to 1873 the Iron Cliffs Company became the owner of all the capital stock of the Pioneer Iron Company, which stock has since that time been held in the names of the officers, directors, stockholders, agents or servants of the Iron Cliffs Company and the Cleveland Cliffs Iron Company for the benefit of said two last named companies, which companies operate together, and whose officers and agents are the same persons.

The furnaces and forges of the Pioneer Iron Company were operated for a number of years by the Iron Cliffs Company, but were destroyed many years ago, and no longer exist. By the limitation of its charter, the Pioneer Iron Company expired on the 2nd day of April, 1887, and ceased to exist and its rights under the lease reverted to the Defendants in Error.

Notwithstanding that the Pioneer Iron Company expired by the limitation of its charter, and was dissolved and ceased to exist in 1887, the Iron Cliffs Company and Cleveland Cliffs Iron Company, William G. Mather, who is the president of said two companies, and Murray M. Duncan, who is managing agent of said companies, under the pretense that he is acting as the agent of the Pioneer Iron Company, have fraudulently combined and planned to obtain iron ore from said lands against the rights of the Defendants in Error by the means that they falsely and fraudulently claim and pretend that said Pioneer Iron Company still exists and owns and holds said lease, and they make use of the Pioneer Iron Company's name as a cover under which and by means of which *they* seek to

carry on the work of mining and removing ore from said lands, and are now actually engaged in carrying out said plan, and have entered upon said lands and are sinking test pits, tearing up the soil and exploring the lands for iron ore and are preparing to mine the ore. (Record, pp. 7, 8, 9). The Bill *prays that they be enjoined from such acts.* (Record, p. 11).

The only Federal question presented in any manner in the case is by the several answer of William G. Mather answering for himself, saying, (Record, p. 52), that "he owns in his own right and as trustee 3940 shares of said stock of said Company, and that if any decree be rendered in this case by the Court in any way declaring a forfeiture or termination or expiration of said ninety-nine year lease or in any way affecting the rights of the Pioneer Iron Company thereunder, the said Pioneer Iron Company not being made a party to this proceeding, he, as such stockholder, and said Pioneer Iron Company, would thereby be deprived of his and its property without due process of law in violation of the provision of the Fourteenth Amendment of the Constitution of the United States, which forbids any State to deprive any person of life or liberty or property without due process of law, and this defendant avers that any decisions or findings of the Court in any way limiting, modifying, annulling or diminishing the value of any of the rights of the Pioneer Iron Company under said ninety-nine year lease, and as expressed therein, would be void and of no effect under said provision of said amendment of the Constitution of the United States." '

There is no Federal question raised by this answer unless it appears to this Court that the Supreme Court of Michigan by its decree declared a forfeiture or termination or expiration of said ninety-nine year lease *as against the Pioneer Iron Company.* If the Court made no decree against that Com-

pany by which its rights would be affected, then, there is no Federal question presented. Neither the Pioneer Iron Company, nor William G. Mather as a stockholder in the Company, would be affected in any manner by the decree.

First. The Bill of Complaint makes no case against the Pioneer Iron Company, and the decree in no respect affects its rights or the rights of Mather as a stockholder in the Company.

The case made by the Bill is against the Iron Cliffs Company, the Cleveland Cliffs Iron Company, William G. Mather, and Murray M. Duncan alone, averring that the Pioneer Iron Company held a lease to the lands by which the right to mine ore was limited to the right made exclusively to itself to mine such ore, and such only as it should convert into merchantable iron in its own furnaces and forges then being constructed; that the Pioneer Iron Company ceased to exist in 1887, and its furnaces and forges had been destroyed, and, notwithstanding these facts, the Plaintiffs in Error fraudulently pretending that the Company still exists, under the cover and by means of its name seek to mine such ore and thereby avail themselves of such lease.

Such a case presents no Federal question by reason of not making the Pioneer Iron Company a party to the suit. The case is solely against the Plaintiffs in Error, and the averment that they are making use of the name of the Pioneer Iron Company, a corporation which has ceased to exist, as a cover for their acts, does not require that such Company shall be made a party to the suit.

If the Pioneer Iron Company is dead, has ceased to exist, it could not be made a party. In a suit against the parties for

their personal acts it may be averred and shown that the Pioneer Iron Company, whose name they fraudulently use as a cover for their acts, has ceased to exist, and is no longer a corporation.

2 Clark & Marshall on Private Corporations, pp. 922, 923. Section 323.
Carey vs. Cincinnati & Chicago R. Co., 5 Iowa, 357 at 367.
Atty. General vs. Railroad Co., 112 Ill., 520 at 537, 538.
Bradley vs. Rappell, 113 Mo., 545.
32 S. W., 645 at 646, 647, 648.
Sturges vs. Vanderbilt, 73 N. Y., 384 at 389, 390.
Anthony vs. American Glucose Co., 146 N. Y., 407.
41 N. E., 23 at 25.

The facts in relation to the Pioneer Iron Company are stated in the Bill of Complaint for the purpose of showing the acts which constitute the fraud by which the Plaintiffs in Error seek to defraud and wrong the Defendants in Error.

The averments are of the same character as would be the case were the Plaintiffs in Error charged by the Bill with making use of the name of a fictitious person or corporation which they fraudulently set up as a cover for their acts. In either such case the claim is false and fraudulent, and may be shown to be false and fraudulent by showing that in the one case the corporation under whom they claim to act is dead, and in the other case that the corporation or person is fictitious.

Second. It was not necessary for the Court to find that the Pioneer Iron Company does not exist in fact as a corporation, in order to grant the relief prayed for.

The *gravamen* of the case is this, viz: The Plaintiffs in Error falsely and fraudulently make use of the name of the

Pioneer Iron Company as a cover for their wrongful acts, by means of which use of its name they themselves mine ore from the lands, converting it to their use.

The case alleged is that the Pioneer Iron Company ceased to do business from March 10, 1866, and ceased to operate under the lease, and abandoned the lease. Its furnaces and forges, to which mining under the lease was made appurtenant, have been destroyed, and no longer exist. The Iron Cliffs Company and Cleveland Cliffs Iron Company acquire and own all the capital stock of the Pioneer Iron Company, and the Plaintiffs in Error, in order to mine the ore for themselves, do the mining under the cover of the name of the Pioneer Iron Company.

The question is, are the Plaintiffs in Error doing those acts? *If they are doing those acts, they are doing the mining, and the Pioneer Iron Company is not doing the mining.* In such case they are mining under the false pretense and claim that the Pioneer Iron Company is doing the mining. By such acts they are defrauding the Defendants in Error. The restraining the Plaintiffs in Error under facts so found in no way affects the right of the Pioneer Iron Company or Mather as a stockholder of the Company. The Pioneer Iron Company in such case is not a necessary party.

1 Cook on Corporations, Section 6, 2 Id., Section 663, 664, (5th Ed.).
Anthony vs. American Glucose Co., 146 N. Y., 407.
41 N. E., 23 at 25.
Leigh vs. Kewanaw Mfg. Co., 127 Fed., 990 at 991.
New Orleans Debenture Redemption Co. vs. Louisiana, 180 U. S., 320.

2 Cook on Corporations, Section 663, p. 1535, says: "The disabilities of the corporation are not disabilities of the stock-

holders, nor are the disabilities of the stockholders the disabilities of the corporation. Hence it is that a corporation is often organized to act as a 'cloak' for frauds. Such cases as these are becoming common, and the Courts are becoming more and more inclined to ignore the corporate existence, when necessary, in order to circumvent the fraud." '

Third. The Federal question (if there is any such question) is raised in the case by William G. Mather alone.

The Answer of Murray M. Duncan states as follows: "That he has no personal interest in the matters set forth in said Bill to any extent whatever, but that in all his actings and doings he is merely the agent of the Pioneer Iron Company." (Record, p. 34).

The Iron Cliffs Company, Cleveland Cliffs Iron Company and William G. Mather answering together, says as follows: "And these defendants further answering say they have no personal interest in any of the matters set forth in said Bill, except as they, *or some of them*, may be stockholders of said Pioneer Iron Company, or as an officer or agent thereof." (Record, p. 44).

The Answer of the Iron Cliffs Company and Cleveland Cliffs Iron Company as thus made was not changed by the amendment. (Record, p. 51).

The amendment setting up the Federal question is expressly confined to the answer of William G. Mather, 'answering for himself.' (Record, pp. 51, 52).

In no other way is any Federal question raised or presented by the Record of the case.

It is in respect to Mather only that the Federal question raised by his answer can be considered in this Court.

Sulley vs. National Bank, 178 U. S., 289 at 297.
Ludeling vs. Chaffee, 143 U. S., 301 at 305.
Giles vs. Little, 134 U. S., 645 at 650.

In Sulley vs. National Bank, 178 U. S., 289 at 297, the statement of the Court, p. 297, is as follows: "However it may be in regard to the rights of parties on appeal in the State Court, we think that in order to be heard in this Court the question must have been raised in the State Court by the individual who seeks to have it reviewed here. The plaintiff in error in this Court must show that he has himself raised the question in the State Court which he argues here, and it will not aid him to show that some one else has raised it in the State Court, while he failed himself to do so."

Fourth. The Federal question raised by Mather's Answer rests upon the alleged fact that he is a stockholder in the Pioneer Iron Company.

For the Court to consider the Federal question raised by him, it must appear to the Court that he is such stockholder of the Pioneer Iron Company.

New Orleans vs. New Orleans Water Works Co., 142 U. S., 79 at 88.
Millingar vs. Hartupee, 6 Wall., 258 at 262.

In New Orleans vs. New Orleans Water Works Co., 142 U. S., 79, the suit was brought by taxpayers, and the Federal

question raised was that by the statute of the legislature of Louisiana, the contract made by the Water Works Company and New Orleans had been impaired, and that by such action the plaintiffs in error had been deprived of their property without due process of law. Dismissing the suit for want of jurisdiction, the Court says, p. 88: "We think that before we can be asked to determine whether the statute has impaired the obligation of a contract, it should appear that there was a legal contract subject to impairment and some ground to believe that it has been impaired, and that to constitute a violation of the provision against depriving any person of his property without due process of law, *it should appear that such person has a property in the particular thing of which he is alleged to have been deprived.*"

Whether Mather is a stockholder of the Pioneer Iron Company is a question of fact for the determination of the State Court, the finding of which does not involve any Federal question, and the finding upon that fact by the State Court is conclusive upon this Court.

Fifth. The finding and decision of the Supreme Court of Michigan. (The italics are ours).

First. The Court finds that the purpose of the Bill is not to forfeit the lease, but to enjoin a continuing trespass.

The opinion of the Court says, (Record, p. 568): "We think, however, the main purpose of the Bill *is not to declare a forfeiture of the lease, but to determine the rights of the parties, which depend largely upon the construction of the deeds, the leases and the various acts and conduct of the parties, extending over a period of more than forty years, and to enjoin a continuing trespass.* The case is one peculiarly ap-

propriate to a Court of Equity. The Bill sets forth three notices *in the name of the Pioneer Iron Company* that it had entered upon the disputed lands for the purpose of mining iron ore. It is, therefore, apparent that numerous acts of trespass, and the removal of valuable ore were threatened. The defendants are not in possession. * * * Whether or not, under these circumstances, ejectment would lie, we need not determine. Complainants being in possession of the property, if their title is valid, irreparable injury was threatened by the defendants. Such trespasses a Court of Equity will enjoin."

Second. The Court finds that the Pioneer Iron Company is used as a "dummy" by the Iron Cliffs Company, and the Cleveland Cliffs Iron Company, who own all the capital stock of the Pioneer Iron Company, and all its property both real and personal, and that the acts of the defendants (the Plaintiffs in Error) are done in the name of the Pioneer Iron Company for their own benefit.

Referring to the objection that the Pioneer Iron Company is not made a party to the suit the Court uses this language. (Record, pp. 569, 570): "It is also urged as a fatal objection to the maintenance of the Bill that the Pioneer Iron Company is not made a party. Under the allegations of the Bill, *as well as under the proofs, the Pioneer Iron Company is used as a "dummy" for the benefit of the defendant companies.* The defendants own and have owned for many years, *all its capital stock*, its furnaces and property, both real and personal. They have managed all its affairs, *and for their own benefit.* All its accounts, if any have been kept in the name of the Pioneer Iron Company, *have been kept upon the books*

of the defendants. The defendants refused upon the trial to produce the books of the Pioneer Iron Company, or their own books showing the accounts. Some of its officers having charge of the books were produced as witnesses, and testified to the above facts. *Under these circumstances these defendants cannot escape the consequences of their acts done in the name of the Pioneer Iron Company for their own benefit.* Admitting that the Pioneer Iron Company is not a dead corporation, *yet all its property, franchise and rights are owned by the defendant companies,* so far as the rights under the ninety-nine year lease are concerned and are fully represented by those now before the Court."

Again, on p. 575, the Court says: "Soon after the execution of the ninety-nine year lease, the Pioneer Iron Company made some explorations upon certain portions of the lands covered thereby, found ore, but not in paying quantities, abandoned the explorations, and for fully forty-three years made no other attempt to avail itself of this mining right.

"In 1866 it conveyed to the Iron Cliffs Company by lease for a period of ten years all its iron works, buildings lands and rights, &c., (reserving, however, certain rights and privileges not necessary to mention), and provided by the lease that dividends should be paid directly to its stockholders rather than into its treasury.

"*The Iron Cliffs Company afterwards became the owner of all its stock, and thereafter carried on the furnace business.* The Pioneer Iron Company never thereafter took any control of its furnace. *It was regarded as merged in the Iron Cliffs Company.* So notorious was this that in the year 1877 the commissioner of mineral statisticts, in his first annual report, speaking of this company, said: "The Pioneer Iron Company, by whom the furnace was built, became subsequently merged into the Iron Cliffs Company. In subsequent reports

it was referred to as 'absorbed by the Iron Cliffs Company.' The officers of the Pioneer Iron Company thereafter neither made nor filed any reports as the law expressly required them to do."

Third. The above is an express finding and decision that the Iron Cliffs Company and the Cleveland Cliffs Iron Company *own all the capital stock* of the Pioneer Iron Company, *and it constitutes a distinct finding that Mather does not own any of its stock.*

It is also a distinct finding by the Court that the Plaintiffs in Error use the Pioneer Iron Company as a "dummy" and do their acts in the name of the Pioneer Iron Company for their own benefit. We have already in the original brief upon the motion to dismiss shown that upon the evidence in the case Mather was not the owner of any of the capital stock of the Pioneer Iron Company at the time the Bill was filed in this case, and we do not wish to add anything to the statement made in that brief upon that subject.

The counsel for the Plaintiffs in Error in their supplemental brief upon the motion to dismiss the Writ of Error, p. 7, say: "The Supreme Court was careless in its statements as to the ownership of the stock of the Pioneer Iron Company."

The fact of the ownership of the stock by the Iron Cliffs Company was directly put in issue by paragraph 12 of the Bill (R., p. 7), and by paragraph 11 of the Answer, (R., pp. 41, 42), and the finding of the Court is upon that direct issue. The evidence abundantly sustains the finding of the Court.

The reference made by the counsel to p. 531 of the Record, as showing the parties who were stockholders of the Pioneer Iron Company, relates to pretended proceedings for reorganization of the Pioneer Iron Company, *taken April 4th and 9th* 1901, *after the proofs had been taken and closed in this suit,*

and such proceedings were put in evidence on the final hearing of the case. The proofs were taken in the suit at a session of the Circuit Court held March 13th to March 23rd, 1901. (Record, p. 52.) See Record, pp. 529, 530.

It will be noted that these proceedings were taken fourteen years after the charter of the Pioneer Iron Company had terminated by its limitation, and no proof was offered to show that the parties assuming to reorganize the Company were stockholders of the Company, or had any right to act in the capacity of stockholders of the Company.

Fourth. The Court finds that the Pioneer Iron Company expired by the limitation of its charter, and that the defendants (the Plaintiffs in Error) claiming a reorganization of the Company, the burden was upon them to show a valid reorganization, but the Court does not find it necessary to decide upon the defendants' claim of reorganization of the Company.

The Court says, p. 569: "The theory of the complainants as stated in their Bill, is that the Pioneer Iron Company is a dead corporation; its charter expired by limitation April 2, 1887; and that no steps were taken for some time thereafter to reorganize the corporation under the amendment to the Constitution and the law; and that that action was wholly invalid. *The Pioneer Iron Company, therefore, was not a necessary party.* (Citing authorities.) *Complainants could not well have made the Pioneer Iron Company a party defendant without recognizing it as an existing corporation. Its existence was in issue, and having expired by limitation, of its charter,* the burden of proof was upon the defendants to show a valid reorganization, so as to make it the successor of the Company within the terms of the ninety-nine year lease.

Equity will enjoin the threatened acts of those assuming to act within the name of a dead corporation."

The Court further says, (Record, p. 576) as follows: *"The charter of the Pioneer Iron Company expired by limitation April 2, 1887.* The Constitution, at the date of its organization and at the expiration of its charter, expressly prohibited the organization of corporations beyond the period of thirty years. No provision then existed either by the Constitution or by the Statute, authorizing a reorganization of corporations which had expired by limitation.

"A constitutional amendment was adopted in 1889 authorizing the legislature to provide by general laws for one or more extensions of the term of such corporations, and also for the reorganization for a further period not exceeding thirty years of such corporations whose terms have expired by limitation on the consent of not less than four-fifths of the capital. Pursuant to this authority the legislature in 1889 passed an act authorizing such reorganization, 2 Comp. Laws, Sec. 7035. Very important questions are raised by counsel as to the effect of this reorganization statute, the validity of the act of reorganization by the Pioneer Iron Company, as to whether the Pioneer Iron Company was in position to avail itself of this statute, and also the effect upon the ninety-nine year lease should the reorganization be held to be valid. *Inasmuch, however, as these questions are not essential to a decision of the case, we refrain from determining them.*"

Fifth. The construction by the Court of the ninety-nine year lease.

The Court places a construction upon the terms of the lease, by which construction the Court determines that the right to

mine ore under the lease is limited to the Pioneer Iron Company, and is not transferable; that its own right to mine ore is made appurtenant to its own furnace then existing, which is referred to in the lease; that such furnace has been destroyed by the Iron Cliffs Company and the Cleveland Cliffs Iron Company and determines that it is not the Pioneer Iron Company which does the acts complained of, but the defendant companies do those acts.

The Court says, (R., p. 573): *"The ninety-nine year lease conveyed to the Pioneer Iron Company only an indivisable, incorporeal, and personal right to mine ore, and then only for such as it should actually convert into merchantable iron at its own furnaces or forges. It granted only certain rights and privileges for a specific purpose. It prohibited assignment and the mining of ore for furnaces not owned by the Company."*

After referring to the right reserved to Harvey, his heirs and grantees, to mine ore, and the fact of the conveyance made by Harvey as a division of its incorporeal hereditament, the opinion proceeds as follows, (Record, p. 573): "Was this right to mine ore under this lease appurtenant to the furnace then existing? It is true that the lease itself does not in express terms limit it to the then existing furnace. We must, therefore, look to the situation of the parties, the object in contemplation, and the surrounding circumstances in determining the question."

After referring to the situation of the parties, the object in contemplation, and the surrounding circumstances, the opinion says, (Record, pp. 574, 575): "We therefore conclude that the Pioneer Iron Company contemplated, provided for, and erected only one furnace with two stacks; that the parties contracted with reference to that furnace; and *that the mining right conveyed was appurtenant to the furnace.*

"Sixth. By the voluntary act of the defendant companies who, since 1866, operated it, the furnace was dismantled in 1894 and totally destroyed. It has never been rebuilt, and there evidently was no intention to rebuild it. *The abandonment and destruction of the furnace also destroyed the appurtenant right to mine the ore under the lease. Nothing was left for the right to be appurtenant to.*"

Seventh. The findings of the Supreme Court of Michigan are the following, viz.: That all the capital stock of the Pioneer Iron Company was acquired and owned by the Iron Cliffs Company, by which finding the Court finds that William G. Mather was not the owner of any of the capital stock of the Pioneer Iron Company—that the charter of the Pioneer Iron Company expired by limitation on April 2 1887—that the ninety-nine year lease conveyed to the Pioneer Iron Company only a personal right to it to mine only such ore as it should itself actually convert into merchantable iron in its own furnace, which was referred to in said lease—that the lease prohibited assignment and the mining of ore for furnaces not owned by the Pioneer Iron Company—that the right to mine ore under lease was appurtenant to the furnace referred to in the lease—that such furnace was destroyed by the Iron Cliffs Company and Cleveland Cliffs Iron Company, called by the Court "Defendant Companies"—that the Pioneer Iron Company is used as a "dummy" for the benefit of the said "Defendant Companies," and that the acts of the defendants are done in the name of the Pioneer Iron Company for their own benefit.

These findings of the Supreme Court of Michigan upon the facts are conclusive upon this Court.

Dower vs. Richards, 151 U. S., 658 at 663, 666.
California Powder Works vs. Davis, 151 U. S., 389 at 393, 394.
Israel vs. Arthur, 152 U. S., 355 at 362.
Egan vs. Hart, 165 U. S., 188 at 189, 192.

Telluride Power &c. Co. vs. Railway Co., 175 U. S., 639 at 645, 647.
Telluride Power &c. Co. vs. Railway Co., 187 U. S., 569 at 584.
Clipper Mining Co. vs. Eli Mining Co., 194 U. S., 220 at 222.
Mining Co. vs. Boggs, 3 Wall., 304 at 309, 310.
Lewis vs. Campau, 3 Wall., 106.
Carpenter vs. Williams, 9 Wall., 785 at 786.
Western Union Telegraph Co. vs. Call Pub. Co., 181 U. S., 92 at 103.

The finding of fact by the State Court upon which the decision of the State Court is based *is conclusive notwithstanding that if the fact were found differently a Federal question would be presented.*

Israel vs. Arthur, 151 U. S., 355 at 362.
Egan vs. Hart, 165 U. S., 188 at 192.
Telluride Power Co. vs. Railway Co., 175 U. S., 639 at 647.
Dower vs. Richards, 151 U. S., 658 at 668.

In a chancery case, (which is the present case), as in a case at law, when the facts are found by the Court below, this Court is concluded by such finding.

Egan vs. Hart, 165 U. S., 188 at 189.
Bement vs. National Harrow Co., 186 U. S., 70 at 83.
Pittsburg &c. Co. vs. Cleveland I. M. Co., 178 U. S., 270 at 279. (Suit in Chancery).

The position of the Supreme Court of Michigan upon the facts found is that, whether the Pioneer Iron Company is regarded as a dead corporation, or as a corporation having an existence, it is being used by the defendants as a "dummy" and its name used as a cover to shield their own acts done for their own benefit in mining the ore.

The decree is that the decree of the Circuit Court be affirmed. (Record, p. 557).

The decree of the Circuit Court which is affirmed is as follows: (Record, p. 559): "It is ordered, adjudged and decreed that the defendants, their counsellors, attorneys, solicitors and agents, and each and every of them whether acting in their individual or representative capacity, immediately vacate and remove from the lands described in the Bill of Complaint, and that they and each of them, be and they hereby are perpetually enjoined from further entering upon the said lands of the complainants for the purpose of exploring for or taking therefrom any minerals or iron ore, or for any purpose whatever, without the consent and authority of the complainants."

The decree is not a decree against the Pioneer Iron Company, nor against its stockholders as stockholders. It enjoined the personal acts of the defendants which are done, not by the Pioneer Iron Company nor by the defendants for that Company as its agents, but acts which are done by themselves for their own benefit, by making use of the name of the Pioneer Iron Company to conceal the fact that themselves, and not the Pioneer Iron Company, do the mining. *The terms of the decree in no manner prevent the Pioneer Iron Company from asserting its rights under the lease either in Court, or by acts out of Court.*

Had these defendants, under the claim that the Pioneer Iron Company had assigned to them the lease, gone to mining ore from the lands, manufacturing it in their own furnaces, the suit to restrain them from such acts on the ground that they could obtain no right under the lease to mine the ore because the lease was not assignable, and because only such ore could be mined under the lease as the Pioneer Iron Company itself

should actually convert into merchantable iron in its own furnaces, it clearly would not have been necessary in such case to make the Pioneer Iron Company a party to the suit. The Court would have been called upon, as in the present case, to construe the lease and determine whether it was assignable by the Pioneer Iron Company, and whether any party beside the Pioneer Iron Company could mine ore under it, and whether ore could be mined for any other purpose than for actual conversion into merchantable iron by the Pioneer Iron Company itself in its own furnaces.

In such case the decree would be the same in terms as the decree which is rendered by the Supreme Court of Michigan in the present case.

It is said by the Plaintiffs in Error that the decree disposed of the rights of the Pioneer Iron Company because it enjoins the defendants, whether "acting in their individual or representative capacity." The terms "representative capacity" do not refer to the defendants in a representative capacity *as agents in fact* of the Pioneer Iron Company, because the Court expressly finds under the proofs that the Pioneer Iron Company is used as a "dummy" for the benefit of the defendant companies, and that their acts done in the name of the Pioneer Iron Company are done by them for their own benefit, *while claiming to represent that Company.*

The Court expressly withholds any decision upon the rights of the Pioneer Iron Company itself under the lease. The Court holds that questions relating to the rights of the Pioneer Iron Company itself are not involved in the decision of the case.

The Court says, (p. 576): "Very important questions are raised by counsel as to the effect of this reorganization statute, the validity of the act of reorganization by the Pioneer Iron Company, as to whether the Pioneer Iron Company was in

position to avail itself of this statute, *and also the effect upon the ninety-nine year lease should the reorganization be held to be valid. Inasmuch, however, as these questions are not essential to a decision of the case, we refrain from determining them.*"

The decree has reference to the acts of the Plaintiffs in Error as found by the Court, viz: Their claim to represent the Pioneer Iron Company while using its name to cover their own acts done for their own benefit in mining ore for their own use. It is these acts done by them *under their pretense of representing the Pioneer Iron Company which are enjoined.*

Sixth. The claim of the Plaintiffs in Error that the Federal question was raised by the Iron Cliffs Company as a stockholder of the Pioneer Iron Company.

The claim could only be made under the third class provided for under Section 709 of the Revised Statutes, and in order to be considered, must have been specially set up or claimed by the Iron Cliffs Company itself.

> Water Power Co. vs. Street Ry. Co., 172 U. S., 475 at 487, 488.
> Yazoo &c. Ry. Co. vs. Adams, 180 U. S., 1 at 14.
> Sully vs. National Bank, 178 U. S., 289 at 297.

To specially set up the Federal question here asserted requires that it appear by the Record that the Iron Cliffs Company set up the claim that by failure to make the Pioneer Iron Company a party, the Iron Cliffs Company would be deprived of its property without due process of law because it was the

owner of capital stock of such Company. That such claim was made by the Iron Cliffs Company cannot be left to inference by this Court.

Kipley vs. Illinois, 170 U. S., 182 at 186.
Michigan Sugar Co. vs. Michigan, 185 U. S., 112 at 113, 114.
Oxley Stave Co. vs. Butler County, 166 U. S., 648 at 654.
Union Mutual Life Ins. Co. vs. Kirchoff, 169 U. S., 103 at 109, 110.
Levi vs. Superior Court of San Francisco, 167 U. S., 175 at 177, 178.
Keokuk &c. Co. vs. Illinois, 175 U. S., 626 at 634.
Dewey vs. DesMoines, 173 U. S., 193 at 198, 199, 200.
Chapin vs. Fye, 179 U. S., 127 at 129.
Spies vs. Illinois, 123 U. S., 131 at 181.
French vs. Hopkins, 124 U. S., 524.
Chappell vs. Bradshaw, 128 U. S., 132 at 133, 134.
Baldwin vs. Kansas, 129 U. S., 52 at 56.
Leeper vs. Texas, 139 U. S., 462 at 467.
Cook County vs. Calumet &c. Canal Co., 138 U. S., 635 at 653.
Brown vs. Massachusetts, 144 U. S., 573 at 579.
Kennard vs. Nebraska, 186 U. S., 304 at 308.

a. The Iron Cliffs Company made no objection that the Pioneer Iron Company was not made a party, and set up no claim to be a stockholder of the Company, or that it would be deprived of its property without due process of law The Bill of Complaint avered that the Iron Cliffs Company became the owner of all the stock of the Pioneer Iron Company in 1873, and that said stock since that time has been held in the names of different individuals for the use and purposes of the Iron Cliffs Company. (Record, p. 7. paragraph 12). This averment is distinctly denied by the Answer of the Iron Cliffs Company, Mather, and the Cleveland Cliffs Iron Company. (Record, p. 41, paragraph 11.) After, in this manner, denying ownership of said stock, this answer of the Iron

Cliffs Company, and Mather, and Cleveland Cliffs Iron Company, says, (Record, p. 44).

"And these defendants further answering say they have no personal interest in any of the matters set forth in said Bill, except as they *or some of them*, may be stockholders of said Pioneer Iron Company or as an officer or agent thereof." *This remains the answer of the Iron Cliffs Company.* It certainly was not then intended by that Company to set up any Federal question on the ground that it was a stockholder of or interested in the Pioneer Iron Company and that such Company was not a party to the suit, and that the Iron Cliffs Company would be deprived of its property without due process of law. *It afterwards, and after the proofs were taken in the suit, joined with Mather in making amendments to this answer upon some points of the Answer, but omitted to join with him in setting up this Federal question. This fact shows affirmatively and distinctly that it did not intend to set up such claim.* (Record, pp. 51, 52).

b. The opinion of the Supreme Court of Michigan does not show that any Federal question was "specially set up or claimed" by or on behalf of the Iron Cliffs Company. The statement of the opinion of the Court is only this, (Record, p. 569): "2. It is also urged as a fatal objection to the maintenance of the Bill that the Pioneer Iron Company is not made a party."

Neither the ground of the objection, nor the party in whose behalf the objection is made, appears in the opinion. It is to be taken that the Court referred to the objection made by Mather's answer, since that is the only objection which appears in the Record that the Pioneer Iron Company is not made a party.

c. The authorities above cited do not permit jurisdiction of the Court to rest upon an *inference* that the objection was made by the Iron Cliffs Company, nor the *inference* that the objection was upon the ground that the Iron Cliffs Co. claimed to be a stockholder of the Pioneer Iron Company, and would be deprived of its property without due process of law because that Company was not made a party.

In order to maintain the jurisdiction upon the statement of the opinion of the State Court, *it is necessary that it should appear by the opinion* that the claim was set up as specially as it is required to be set up in the Bill or Answer in order that the claim by the Bill or Answer should confer jurisdiction. It is not sufficient that it should appear in the opinion that the Iron Cliffs Company objected that the Pioneer Iron Company was not made a party. It should appear that the objection was made upon a ground that presents a Federal question. See cases above cited and

Howard vs. Flemming, 191 U. S., 126 at 137.
Land and Water Co. vs. San Jose Ranch Co., 189 U. S., 177 at 179, 180.
Giles vs. Teasley, 193 U. S., 146 at 160.

d. The briefs presented to the State Court cannot be referred to for the purpose of showing that the Federal question was set up or claimed by the Iron Cliffs Company.

Sawyard vs. Denny, 158 U. S., 180 at 183.
Gibson vs. Chouteau, 8 Wall., 314.
Zadig vs. Baldwin, 166 U. S., 485 at 488.

e. The Plaintiffs in Error refer to the opinion of the Circuit Court from which appeal was taken to the State Supreme Court for the purpose of showing the jurisdiction of

this Court. Jurisdiction is limited by Section 709, U. S. Revised Statutes to review of the judgment or decree of the Supreme Court of Michigan, *the highest Court of the State.* The opinion of the Circuit Court is irrelevant upon the question before this Court.

Gregory vs. McVeigh, 23 Wall., 294 at 305, 306.
Fashnacht vs. Frank, 23 Wall., 416 at 420.
Atherton vs. Fowler, 91 U. S., 143 at 146.
Fisher vs. Perkins, 122 U. S., 522 at 525.

f. It is respectfully submitted that it clearly appears from the Record that the State Court based its decree upon the above facts as having been found by the Court, and that such facts having been so found are sufficient to sustain the decree. This Court, without inquiring into the soundness of the decision of the State Court, refuses to take jurisdiction in such cases.

Klinger vs. State of Missouri, 13 Wall., 257 at 263.
Murdock vs. City of Memphis, 20 Wall., 590 at 636.
Hale vs. Akers, 132 U. S., 554 at 564, 565.
Beaupre vs. Noyes, 138 U. S., 397 at 402.
DeSaussure vs. Gaillard, 127 U. S., 216 at 233, 234.
Dibble vs. Bellingham Bay Land Co., 163 U. S., 63 at 69.
Pittsburg &c. Co. vs. Cleveland I. M. Co., 178 U. S., 270 at 279.
Giles vs. Teasley, 193 U. S., 146 at 160.

In Klinger vs. State of Missouri, 13 Wall., at 263, the Court uses this language: "The rules which govern the action of this Court in cases of this sort are well settled. Where it appears by the Record that the judgment of the State Court might have been based either upon a law which would raise a question of repugnancy to the Constitution, laws or treaties of the United States, or upon some other independent

ground; and it appears that the Court did, in fact, base its judgment on such independent ground, and not on the law raising the Federal question, this Court will not take jurisdiction of the case, *even though it might think the position of the State Court an unsound one.*"

In De Saussure vs. Gaillard 127 U. S., at 233, 234, the above quotation from Klinger vs. Missouri is repeated, and the Court adds: "And it has been repeatedly decided, under Section 709 of the Revised Statutes, that to give this Court jurisdiction of the Writ of Error to a State Court, it must appear affirmatively, not only that a Federal question was presented for decision to the highest Court of the State having jurisdiction, but that its decision was necessary to the determination of the cause, and that it was actually decided, *or that the judgment as rendered could not have been given without deciding it.*"

In Murdock vs. City of Memphis, 20 Wall., 590, at 636, the Court by Mr. Justice Miller, says: "If it (the Federal question) was erroneously decided against Plaintiff in Error, then this Court must further inquire whether there is any other matter or issue adjudged by the State Court which is sufficiently broad to maintain the judgment of that Court, notwithstanding the error in deciding the issue raised by the Federal question. If this is found to be the case the judgment must be affirmed *without inquiring into the soundness of the decision on such other matter or issue.*"

In Hale vs. Akers, 132 U. S., at p. 564, the same statement of the law is repeated.

In Pittsburg &c Co. vs. Cleveland I. M. Co., 178 U. S., at 279, the facts are pointed out upon which, as appears by the opinion of the Supreme Court of Michigan, the decision of the Court was based; among which were facts constituting an

estoppel. The Court says: "But again, *and whatever the error in that conclusion* (we do not assert there was any) the Court decided, as an independent ground of estoppel, that plaintiff was guilty of laches, and that was sufficient to sustain its judgment."

II.

No Federal question is presented by the Record.

The claim that there is a Federal question is put upon the ground that William G. Mather is a stockholder in the Pioneer Iron Company, and that if any decree shall be made in the suit, declaring a forfeiture or termination or expiration of the ninety-nine year lease, or in any way affecting the rights of the Pioneer Iron Company thereunder, Mather, as such stockholder, will be deprived of his property without due process of law because said Pioneer Iron Company is not made a party to the suit. (Record, p. 52).

The point is, that if the decision of the State Court in construing the lease, or by finding of the facts in relation to Mather's conduct, results in a decree affecting the rights of the Pioneer Iron Company, Mather, being a stockholder, will be deprived of his property without due process of law because the Pioneer Iron Company is not a party to the suit.

First. Due process of law does not require that the Pioneer Iron Company be made a party in order that the Court may determine the rights of Mather, and the character of the acts of Mather, which are involved in the suit.

The case made by the Bill is that the lease permits no mining to be done by anyone other than the Pioneer Iron Com-

pany, *and by it* only for the limited purpose of converting such ore as it may mine into merchantable iron in its own furnaces. That the Pioneer Iron Company does not itself mine any ore, *but Mather, in order that he may get the benefit of the provisions of the lease, fraudulently acts under the cover of the name of that Company, and mines the ore for his own use and benefit.*

Mather denies this charge, and says the Pioneer Iron Company does the mining, and that he is acting in the capacity of its agent in doing the mining. The case made by the Bill is to try and to determine *the character of the acts of Mather*, viz.: to determine that the lease does not permit any mining by anyone besides the Pioneer Iron Company, and that Mather is mining ore in violation of its provisions. This requires the Court to determine whether the terms of the lease permit Mather to mine under it and whether he is attempting to mine under it in the manner charged. It is to construe the lease, and decide whether under its terms Mather is authorized to do the acts which the Court finds Mather engaged in doing. In other words, the Court determines the extent of the authority or right which Mather has under the particular instrument *which he sets up and claims gives authority for his acts. It is his own personal acts and the authority which he claims for his acts which are involved.*

Due process of law is observed when the party charged is duly brought into a Court which has jurisdiction of the subject of the suit, and of the party, and he is given opportunity to defend against the charge made against him, by the ordinary course of proceedings which are adopted in the State Court. The proceedings of the State Court are determined by the legislature or judiciary of the State, and so long as the

requirements are observed that jurisdiction of the subject of the suit and of the party charged, is obtained, and opportunity is secured to him for making defence, errors committed by the Court in the proceedings are not subject to review by this Court.

Iowa Street Ry. Co. vs. Iowa, 160 U. S., 389 at 393.
Simon vs. Craft, 182 U. S., 427 at 436, 437.
Louisville & Nashville R. Co. vs. Schmidt, 177 U. S., 230 at 236.
Allen vs. Georgia, 166 U. S., 138 at 140.
Central Land Co. vs. Laidley, 159 U. S., 103 at 112.
York vs. Texas, 137 U. S., 15 at 20.
Walker vs. Sauvinet, 92 U. S., 90 at 92.
Kennard vs. Louisiana ex rel. Morgan, 92 U. S., 480 at 481 and 483.
Davidson vs. New Orleans, 96 U. S., 97 at 105.
Caldwell vs. Texas, 137 U. S., 692 at 697 and 698.
Hagar vs. Reclamation District, 111 U. S., 701 at 708.
New Orleans Redemption Co. vs. New Orleans, 180 U. S., 320 at 326, 328, 331, 332.
Arrowsmith vs. Harmoning, 118 U. S., 194 at 195, 196.
Dent vs. W. Virginia, 129 U. S., at 114.
Holden vs. Hardy, 169 U. S., 366 at 385 to 388.
Marchant vs. Pennsylvania R. R. Co., 153 U. S., 380 at 385, 386.

In Iowa Street Ry. Co. vs. Iowa, 160 U. S., at 389, suit was by mandamus to compel the Railway Company to operate a leased portion of its land. Judgment was rendered against the Company. In the Writ of Error to the State Court it was contended by the Company that the action for mandamus could not be lawfully brought to compel it to operate such portion of its road until its legal duty to do so had been determined by verdict of the jury. The Court says, p. 393: "But it is clear that the Fourteenth Amendment in no way undertakes to control the power of a State to determine by what process

legal rights may be asserted, or legal obligations be enforced, provided the method of procedure adopted for these purposes gives reasonable notice and affords fair opportunity to be heard before the issues are decided. This being the case it was obviously not a right, privilege or immunity of a citizen of the United States to have a controversy in the State Court prosecuted or determined by one form of action instead of by another. It is also equally evident, provided the form sanctioned by the State law *gives notice and affords an opportunity to be heard* that the mere question of whether it was by motion or ordinary action in no way rendered the proceeding not due process of law within the Constitutional meaning of those words. Whether the Court of last resort of the State of Iowa properly construed its own Constitution and laws in determining that the summary process under those laws was applicable to the matter which it adjudged was purely the decision of a question of State law, binding upon this Court. Mere irregularities in the procedure, if any, were matters solely for the consideration of the judicial tribunal within the State, empowered by the laws of the State to review and correct errors committed by its Courts. Such errors affect merely matters of State law and practice, in no way depending upon the Constitution of the United States or upon any act of Congress. * * * It is manifest that it was never contemplated by the framers of the Constitution that this Court should sit in review, as an Appellate Court, of such a question as that presented in the Record of the case at bar, viz., whether or not the highest Court of the State erred in holding that it could rightfully determine from the statements in the pleadings filed by both parties to a controversy pending before it that the averments of an answer set forth no defence to the claim of the plaintiff."

In Simon vs. Craft, 182 U. S., 427, the Court says, p. 436: "The essential elements of due process of law are notice and opportunity to defend. In determining whether such rights were denied we are governed by the substance of things and not by mere form."

Again on p. 437, the Court says: "But the due process clause of the Fourteenth Amendment does not necessitate that the proceedings in a State Court should be by a particular mode, but only that there shall be a regular course of proceedings in which notice is given of the claim asserted, and an opportunity afforded to defend against it. Louisville & Nashville R. Co. vs. Schmidt, 177 U. S., 230, 236, and cases cited. *If the essential requisites of full notice and an opportunity to defend were present, this Court will accept the interpretation given by the State Court as to the regularity under the State Statute of the practice pursued in the particular case.*"

In Louisiana & Nashville R. Co. vs. Schmidt, 177 U. S., 230 at 236, the Court says: "It is no longer open to contention that the due process clause of the Fourteenth Amendment to the Constitution of the United States does not control mere forms of procedure in State Courts or regulating practise therein. All its requirements are complied with, provided in the proceedings which are claimed not to have been due process of law *the person condemned has had a sufficient notice and adequate opportunity has been afforded him to defend.* Iowa Central Ry. Co. vs. Iowa, 160 U. S., 389; Wilson vs. N. Carolina, 169 U. S., 586."

In Allen vs. Georgia, 166 U. S., 138, in which the plaintiff in error had been convicted and sentenced for the crime of murder, the Court uses this language, p. 140: "To justify any interference upon our part it is necessary to show that the course pursued has deprived, or will deprive, the plaintiff

in error of his life, liberty or property without due process of law. Without attempting to define exactly in what due process of law consists it is sufficient to say that, if the Supreme Court of the State has acted in consonance with the Constitutional laws of the State and its own procedure, it could only be in very exceptional circumstances that this Court would feel justified in saying that there had been a failure of due legal process. *We might ourselves have pursued a different course in this case, but that is not the test.* The plaintiff in error must have been deprived of one of those fundamental rights, the observance of which is indispensible to the liberty of the citizen, to justify our interference."

The above statement is quoted with approval in Wilson vs. N. Carolina 169 U. S., at p. 593, and in Hovey vs. Elliott, 167 U. S., at p. 443.

In Central Land Co. vs. Laidley, 159 U. S., 103 at 112, the Court, by Mr. Justice Gray, says: "*When the parties have been fully heard in the regular course of judicial proceedings* an erroneous decision of the State Court does not deprive the unsuccessful party of his property without due process of law within the Fourteenth Amendment of the Constitution of the United States."

In York vs. Texas, 137 U. S., 15, by statute the defendant in suit, if he asks the Court to determine any question, even that of service, submits himself wholly to its jurisdiction. Elsewhere than in Texas he gets an opinion of the Court before deciding his own action. In Texas he takes all the risk himself. If the service be in fact insufficient, all subsequent proceedings, including the formal entry of judgment are void; if sufficient they are valid. The Court says, p. 20: "And the question is, whether under the Constitution of the United States the defendant has an inviolable right to have this ques-

tion of the sufficiency of the service decided in the first instance and alone. The Fourteenth Amendment is relied upon as invalidating such legislation. That forbids a State 'to deprive any person of life, liberty or property without due process of law.' And the proposition is, that the denial of a right to be heard before judgment simply as to the sufficiency of the service operates to deprive the defendant of liberty or property. But the mere entry of a judgment for money, which is void for want of proper service, touches neither. It is only when process is issued thereon if the judgment is sought to be enforced that liberty or property is in present danger. If at that time of immediate attack protection is afforded, the substantial guarantee of the amendment is preserved, and there is no just cause of complaint. *The State has full power over remedies and procedure in its own Courts, and can make any order it pleases in respect thereto, provided that substance of right is secured without unreasonable burden to parties and litigants.*"

In Church vs. Kelsey, 121 U. S., 282, the question was presented whether the State of Pennsylvania by giving jurisdiction to a Court of Equity of a suit brought by an owner of an equitable interest in land to establish his rights against the holder of a legal title, deprives any person of life liberty or property without due process of law, because the holder of the legal title is deprived of the right to a trial by jury which he would have by suit at law. Deciding against this contention, the Court says, p. 283: "Certainly the provisions of the Constitution referred to cannot have the affect of taking away from the States the power of giving a Court of Equity jurisdiction in cases requiring equitable relief. It may be true that in Pennsylvania 'equity powers have been doled out to the Courts by the legislature with a sparing hand,' but there is nothing in the Constitution of the United States which requires that this should always be so."

In Walker vs. Sauvinet, 96 U. S., 90, Walker was sued in a civil action, and demanded a trial by jury. The cause was thereupon tried by a jury, who failed to agree. Then upon motion of the plaintiff's counsel, the Court proceeded to decide the case under the provisions of the Statute of the State of Louisiana authorizing the Court under such circumstances to decide the suit, and render judgment. Judgment was rendered against Walker for $1,000, and was affirmed by the Supreme Court of the State. The question was whether, under the provision that no person shall be deprived of life, liberty or property without due process of law, a party could, in such case, be deprived of the right to a trial by jury. In sustaining the validity of the law, the Court, by Mr. Chief Justice Waite, says, p. 92: "A State cannot deprive a person of his property without due process of law, but this does not necessarily imply that all trials in State Courts affecting the property of persons must be by jury. This requirement of the Constitution is met if the trial is had according to the settled course of judicial proceedings. Murrays Lessee vs. Hoboken L. & I. Co., 18 How., 280. Due process of law is process due according to the law of the land. *This process in the States is regulated by the law of the State.*"

In Kennard vs. Louisiana ex rel. Morgan, 92 U. S., 480, Kennard had been appointed Associate Justice of the Supreme Court of Louisiana. Before the expiration of the term for which he was appointed, as claimed by him, his title to the office was tried under proceedings authorized by the Statute of the State, which authorized judgment to be rendered without a trial by jury. In deciding the case, the Court by Mr. Chief Justice Waite, says, p. 481: "The question before us is, not whether the Courts below, having jurisdiction of the case and the parties, have followed the law, but whether the law, if followed, would have furnished Kennard the protec-

tion guaranteed by the Constitution. *Irregularities and mere errors in the proceedings can only be corrected in the State Courts. Our authority does not extend beyond an examination of the power of the Courts below to proceed at all.*"

Again the Court says, p. 483, after referring to the provisions of the statute under which the proceedings were had. "From this it appears that ample provisions has been made for the trial of the contestation before a Court of competent jurisdiction; for bringing the party against whom the proceeding is had before the Court, and notifying him of the case he is required to meet; for giving him an opportunity to be heard in his defence; for the deliberation and judgment of the Court; for an appeal from this judgment to the highest Court of the State, and for hearing and judgment there. *A mere statement of the facts carries with it a complete answer to all the Constitutional objections urged against the validity of the act.*"

In Davidson vs. New Orleans, 96 U. S., 97, the Court uses this language, p. 105: "Under whatever other clause of the Federal Constitution we may review the case, it is not possible to hold that a party has, without due process of law, been deprived of his property, when, as regards the issues affecting it, *he has, by the laws of the State, a fair trial in a Court of Justice, according to the modes of proceeding applicable in such a case.*"

In Caldwell vs. Texas, 137 U. S. 692, Caldwell was tried for murder under an indictment which he claimed was not due process of law. In deciding the case, Mr. Chief Justice Fuller says, p. 697: "By the Fourteenth Amendment the powers of the States in dealing with crime within their borders are not limited, but no State can deprive a particular person or class of persons of equal and impartial justice under the law. Law, in its regular course of administration through Courts

of Justice is due process, and when secured by the law of the State, the Constitutional requisition is satisfied. 2 Kent Comm., 13. And due process is so secured by laws operating on all alike, and not subjecting the individual to the arbitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice."

Again on p. 698, the Court says: "The plaintiff in error was not denied the equal protection of the laws, nor deprived of the process due by the law of the land. The Constitution of Texas secured to him the right to demand the nature and cause of the accusation against him, and the State Court determined, as was its province, that this demand was satisfied by the indictment in question. His objections were in effect to the technical sufficiency of the indictment, but not that his rights had been determined by any other rules than those applied to the rest of the community, *nor that the Court had done more than commit errors in a disposition of the subject within its jurisdiction.*"

In Hagar vs. Reclamation District 111 U. S., 701, the Court says, p. 708: "Undoubtedly where life and liberty are involved, due process requires that there be a regular course of judicial proceedings, *which imply that the party to be affected shall have notice and an opportunity to be heard*, so, also, where title or possession of property is involved."

In Arrowsmith vs. Harmoning, 118 U. S., 194, the Court says, p. 195: "The constitutional provision is, 'nor shall any State deprive any person of life, liberty or property without due process of law.' Certainly a State cannot be deemed guilty of a violation of this constitutional obligation simply because one of its Courts while acting within its jurisdiction, has made an erroneous decision. The legislature of a State

performs its whole duty under the Constitution in this particular when it provides a law for the government of its Courts while exercising their respective jurisdictions, which, if followed, will furnish the parties the necessary constitutional protection. All after that pertains to the Courts, and the parties are left to the appropriate remedies for the correction of errors in judicial proceedings."

In the case at bar there is no question of the jurisdiction of the State Court in respect to the subject of the suit, or in respect to Mather in person, nor of his full opportunity to make his defence whatever the charge against him may be. All the requirements of due process of law were observed in the trial in respect to Mather and his rights.

The question whether in the proceedings in the suit after full jurisdiction had been acquired, the State Court should have required that the Pioneer Iron Company be made a party to the suit in order to determine, not the right of the Pioneer Iron Company, but in order to determine the rights of Mather does not involve due process of law. Whether the Pioneer Iron Company was a necessary party in order that the Court might adjudge the rights of Mather in respect to the issues presented in the case *was to be determined upon general principles of equity jurisprudence relating to the proceedings of the Court, and was to be determined by the State Court in view of all the circumstances presented to the Court, and of the decree which might be rendered.* The decision of the State Court upon that question is not subject to review.

Story's Eq. Pl., Sections 72, 75, 76c, 135a, 136, 242.
Elmendorfer vs. Taylor, 10 Wheat., 152 at 166, 167.
California vs. Southern Pacific Co., 157 U. S., 229 at 256, 257.
Minnesota vs. Northern Securities Co., 184 U. S., 199 at 235.

In Story's Eq. Pl., after stating the general rule of Courts of Equity, requiring that all persons materially interested in the subject matter of the suit are to be parties to it, in Section 76c says: "The truth is, that the general rule in relation to parties, does not seem to be founded on any positive and uniform principle; and therefore it does not admit of being expounded by the application of any universal theorem, as a test. It is a rule founded partly on artificial reasoning partly in considerations of convenience, partly in the solicitude of Courts of Equity to suppress multifarious litigation, and partly in the dictate of natural justice, that the rights of persons ought not to be affected in any suit, without giving them an opportunity to defend them. Whether, therefore, the common formulary be adopted, that all persons materially interested in the suit, or in the subject of the suit, ought to be made parties, or that all persons materially interested in the object of the suit ought to be made parties, we express but a general truth in the application of the doctrine, which is useful and valuable indeed as a practical guide, but is still open to exceptions, and qualifications, and limitations, the nature and extent and application of which are not and cannot, independently of judicial decision, be always clearly defined."

In Section 135a, the author says: "Besides, it is to be considered; that the general rule requiring all persons in interest to be made parties to the suit is, in most cases, not in any just sense, a right of the parties brought before the Court, but rather a rule prescribed by Courts of Equity to themselves in the exercise of their jurisdiction, founded upon their own notions of public policy, or public convenience. It is, in a great measure, a rule of discretion, founded in the anxiety of those Courts to do justice among all the parties, having an interest in the subject matter or the object of the suit, whether that interest be mediate or immediate, present or future, for

the purpose of suppressing future controversy and litigation. The rule is useful when applied to its proper, legitimate purposes."

In Elmendorfer vs. Taylor, 10 Wheat., 152, Chief Justice Marshall, delivering the opinion of the Court upon this subject, says, pp. 166, 167: "This objection does not affect the jurisdiction, but addresses itself to the policy of the Court. Courts of Equity require that all the parties concerned in interest shall be brought before them, that the matter in controversy may be finally settled. *This equitable rule, however, is framed by the Court itself, and is subject to its discretion.* It is not, like the description of parties, an inflexible rule, a failure to observe which turns the party out of Court because it has no jurisdiction over his cause; but being introduced by the Court itself, for the purposes of justice, is susceptible of modification for the promotion of those purposes."

In California vs. Southern Pac. Co., 157 U. S., 229, the State of California, by its Attorney General by leave of the Court exhibited its Bill in Equity in the Supreme Court of the United States. The question was presented in the case of necessary parties to the suit, and referring to the proceedings taken in the case upon that subject, Mr. Chief Justice Fuller, delivering the opinion of the Court, says, p. 256: "The matter was thus left to the consideration of counsel as to whether indispensable or necessary parties had not been joined, while if the case was permitted to go to a hearing the Court would then be able to dispose of it understandingly. We may add, that, that even if reference could be made to the 47th rule in Equity by way of analogy, that rule does not apply when indispensable parties are lacking, *and that in respect of necessary parties the cause may or may not be proceeded in without them, as the Court may determine in the exercise of sound dis-*

cretion. We have no hesitation in holding that when an original cause is pending in this Court to be disposed of here in the first instance and in the exercise of an exceptional jurisdiction, it does not comport with the gravity and finality which should characterize such an adjudication to proceed in the absence of parties whose rights would be in effect determined, even though they might not be technically bound in subsequent litigation in some other tribunal."

Second. The Pioneer Iron Company not being made a party to the suit, cannot be bound by the decree, and its rights will not be affected in any manner by the decree.

Story's Eq. Pl., Section 75.
Finley vs. United States Bank, 11 Wheat., 304 at 306, 307.
New Orleans Water Works vs. New Orleans, 164 U. S., 471 at 480.

Third. The Supreme Court of Michigan places the decision that the Pioneer Iron Company is not a necessary party upon the ground that the case presented for the determination of the Court is the charge that the Pioneer Iron Company, whether it be regarded as dead, or as still existing, is used as a "dummy" by the Plaintiffs in Error, and its name is employed by them as a cover for their acts done by themselves for their own benefit. (Record p. 569.)

This decision rests upon the principles of general law of Equity jurisprudence as applied to the facts with which the Court has to deal. The Court also holds upon this subject that the objection should have been raised by the Plaintiffs in Error by demurrer, because the facts upon which the objection is based are apparent upon the face of the Bill.

A decision upon this point is based upon the question of proper proceedings and practice of the Court. Clearly, the judgment of the Court that the Pioneer Iron Company is not a necessary party does not present any Federal question and is not subject to review.

Murdock vs. City of Memphis, 20 Wall., 590 at 636 and 638.
Avery vs. Popper, 179 U. S., 305 at 315.
Rio Grande R. Co. vs. Vinette, 132 U. S., 554 at 564.
Beaupre vs. Noyes, 138 U. S., 397 at 401, 402.
Telluride Power Co. vs. Rio Grande Ry. Co., 175 U. S., 639 at 647.

In Murdock vs. City of Memphis, 20 Wall., 638, Mr. Justice Miller in delivering the opinion of the Court, uses this language, p. 638: "The claim of right here set up is one to be determined *by the general principles of equity jurisprudence*, and is unaffected by anything found in the Constitution, laws or treaties of the United States. Whether decided well or otherwise by the State Court, we have no authority to inquire."

In Avery vs. Popper, 179 U. S., at 315, Mr. Justice Brown delivering the opinion of the Court, uses this language: "This was a question either of local law *or of general law*. If of local law, of course the decision of the Supreme Court of Texas is binding upon us. If of general law, as it involves no Federal element, it is equally binding in this proceeding, since only Federal rights are capable of being raised upon writs of error to State Courts. Conceding that, if the question had arisen on appeal from a Circuit Court of the United States, we might have come to a different conclusion, it by no means follows that we can do so upon a Writ of Error to a State Court, whose opinion upon a question of general law is ~~now~~ not reviewable here."

It is respectfully submitted that the Pioneer Iron Company was not a necessary party to the suit in order that due process of law be observed by the Court in deciding upon the case made against Mather.

III.

The Federal question claimed by the Plaintiffs in Error cannot arise without a determination first of the fact that the Pioneer Iron Company was reorganized.

First. It is an admitted fact that the Pioneer Iron Company was organized on the 3rd of April, 1857, for the period of thirty years. (Bill, Record, pp. 1 and 2; Exhibit B, pp. 16, 17; Answers Record, pp. 30 and 40).

The Bill avers that the charter of the Pioneer Iron Company expired by limitation April 2, 1887. This was made an issue in the case. (Bill, para. 13 p. 7; Answer, para. 11, pp. 41, 42).

The Court explicitly decided that "the charter of the Pioneer Iron Company expired by limitation April 2, 1887." (Record, p. 576).

The authorities are uniform that upon the expiration of the time limited in the charter for the existence of the corporation, the corporation becomes *ipso facto* dissolved and ceases to exist.

2 Beach on Private Corporations, p. 1216, Section 780.
2 Clark & Marshall on Private Corporations, p. 839, Section 305.

2 Cook on Corporations, p. 1384, Section 628 (Fifth Ed.).
Swan Land and Cattle Co. vs. Frank, 148 U. S., 603 at 611.
National Bank vs. Colby, 21 Wall., 609 at 615.
Sturges vs. Vanderbilt, 73 N. Y., 384 at 390.
People vs. Walker, 17 N. Y., 502 at 503.
Mason vs. Perkins, 73 Mich., 303 at 313, 320, 321.
Agricultural Society vs. Housemon, 81 Mich., 609 at 614.

No suit can be maintained against a corporation after its dissolution.

National Bank vs. Colby, 21 Wall., 609 at 615.
Fitts vs. National Life Association, 130 Ala., 413.
Thornton vs. Marginal Freight Ry., 123 Mass., 32 at 34.
Marion Phosphate Co. vs. Perry, 74 Fed., 425 at 427 (C. C. A.).

Second. The Plaintiffs in Error, as their defence, set up a reorganization of the Pioneer Iron Company, and aver its existance as a valid and existing corporation. (R., p. 51.) The decision of the State Court in reference to this defence is that, at the time the Company was organized and at the expiration of its charter, the Constitution of the State expressly prohibited the organization of corporations beyond the period of thirty years, and no provision existed either by the Constitution or by Statute, when the Company was organized or when its charter expired, authorizing a reorganization of corporations which had expired by limitation. The language of the Court is as follows, (Record, p. 576): "The charter of the Pioneer Iron Company expired by limitation April 2 1887. The Constitution, at the date of its organization and at the expiration of its charter, expressly prohibited the organization of corporations beyond the period of thirty years. No provision then existed, either by the Constitution or by Statute,

authorizing the reorganization of corporations which had expired by limitation."

This decision in respect to the Constitution and law of the State is controlling in this suit.

Town of Ottawa vs. Perkins, 94 U. S., 260 at 267.
Post vs. Supervisors, 105 U. S., 667 at 669.
Burgess vs. Seligman, 107 U. S., 20 at 33.
Warburton vs. White, 176 U. S., 484 at 496.
Avery vs. Popper, 179 U. S., 305 at 315.

The State Court refers to the fact that in 1889, (which was two years after the expiration of the charter of the Pioneer Iron Company), the State Constitution was amended, and a statute was passed for the reorganization of corporations whose terms had expired by limitation. But the Court withholds decision in reference to the effect of the statute, the validity of the reorganization of the Company, or whether the Company was in a position to avail itself of the statute, and the effect upon the ninety-nine year lease should the reorganization be held to be valid. (Record, p. 576).

It is very clear that these are questions which arise exclusively under the local laws of the State, and until decision is made upon them it cannot appear that the Pioneer Iron Company exists as a corporation and could be made a party to the suit.

This Court will not find a fact not determined by the State Court in order to determine that a Federal question is presented, and therefore, the Court will not, in this case, inquire and determine whether under the Constitution and Statutes of Michigan the Pioneer Iron Company could be reorganized, and

also whether under proceedings attempted for the purpose a reorganization was accomplished.

Telluride Power Co. vs. Rio Grande R. Co., 175 U. S., 639 at 647.
Dower vs. Richards, 151 U. S., 658 at 663.
Israel vs. Arthur, 152 U. S., 355 at 362.

In Telluride Power Co. vs. Rio Grande R. Co., 175 U. S., 639, the right of the Plaintiffs in Error was claimed under Section 2339 of the Revised Statute, and depended upon the priority of possession of land. The opinion of the Supreme Court of Utah, whose judgment was under review, stated that the Court was "unable to find from a preponderance of the evidence in the record, that the defendants, or either of them, had appropriated the land in dispute, and that they were, or that either of them was, in actual possession of it when the plaintiff located its right of way, took actual possession and engaged in grading it."

This Court in delivering the opinion, says, p. 647: "But the difficulty in this case is that, before it could be said that any right or title under a statute of the United States had been denied, it was necessary to establish as a question of fact priority of possession on the part of the Telluride Company, as well as conformity to local customs, laws and decisions. *These were local and not Federal questions. The jurisdiction of this Court in this class of cases does not extend to questions of fact or of local law, which are merely preliminary to, or the possible basis of, a Federal question.*"

Third. The Pioneer Iron Company was not reorganized so as to continue to hold the ninety-nine year lease after the expiration of the charter, or so as to be successor of the Pioneer Iron Company to its rights under the ~~charter~~ lease.

The contention of the Plaintiffs in Error is that the Pioneer

Iron Company was not dissolved at the expiration of the period limited by its charter, but, on the contrary, continued to exist for the period of three years thereafter by virtue of the Statute of the State which provides as follows: "All corporations whose charters will expire by their own limitation, or shall be annulled by forfeiture or otherwise, shall nevertheless be continued bodies corporate, for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock; but not for the purpose of continuing the business for which such corporations have been or may be established."

This Statute was enacted in 1838, and was incorporated in the Revised Statutes of 1846, and appears in the subsequent compilations of the Statutes as follows: R. S. 1838, p. 229, Sec. 7; R. S. 1846, p. 212, Sec. 8; 1st Comp. Laws 1857, p. 701, Sec. 2150; 1st Comp. Laws 1871, p. 1150, Sec. 3435; 1st Comp. Laws 1882, p. 1244, Sec. 4867; 3rd Comp. Laws 1897, p. 2627, Sec. 8534.

When this Statute was adopted in 1838, and when it was incorporated in the revision of 1846, there was no provision of the State Constitution limiting the period for which corporations might be formed, and there was no general statute for the organization of corporations. Corporations were formed under special acts of the legislature, by each of which acts the period for which the corporation might be formed was determined.

The Constitution of Michigan adopted in 1851, Art. XV, Sec. 1, provided that, "Corporations may be formed under general laws but shall not be created by special act except for municipal purposes." Sec. 10 of said Art. XV is as fol-

lows: "No corporation, except for municipal purposes, or for the construction of railroads, plank roads and canals, shall be created for a longer term than thirty years."

1st Comp. Laws, 1857, pp. 70, 71.

This provision remained unchanged until amended in 1889, over two years after the expiration of the charter of the Pioneer Iron Company, which amendment is referred to in the finding of the State Court in this case. Laws of Michigan 1899, pp. 428, 429 and 455.

In 1853 a general Act for the formation of corporations was adopted, under which the Pioneer Iron Company was organized, and by Section 6 the Act provided in respect to corporations formed under it that "the term of its existence not to exceed thirty years." Laws of 1853, pp. 53, 54.

The general Statute of 1838 above quoted provided for the continuance of the corporations for the period of three years after their charters expired by limitation, and has never been reenacted by the legislature since the adoption of the Constitution of 1851. While it appears in the subsequent compilations, the compilations are not a re-enactment of the Statute. The effect of the provision of said Sec. 10 of Art. XV of the Constitution, as it stood prior to the amendment of 1899, was that, *at the expiration of the term of thirty years from the time of the formation of the corporation, the corporation became dissolved for all purposes and ceased to exist. It was dead and out of the way as though it had never been.*

The effect of said provision of the Constitution was also to limit the application and force of said three years statute *to corporations which, by their articles of association, were formed for less than thirty years.* The Statute would apply to and continue in existence for three additional years, those corpora-

tions whose charters did not provide for a term exceeding twenty-seven years, but the term of the charter and the three years added by Statute could not extend the existence of the corporation beyond the period of thirty years provided by the Constitution.

This must clearly be the intention of the Constitution. It is the construction given to the Constitution by the Supreme Court of the State, and this construction does not leave the question open to argument here.

> Mason vs. Perkins, 73 Mich., 303 at 313, 314, 319, 321.
> Mining Co. vs. Secretary of State, 82 Mich., 573 at 575.
> Mason vs. Pewabic Mining Co., 66 Fed., 391 at 394 (C. C. A.).

In Mason vs. Perkins, 73 Mich., 303, the Pewabic Mining Company was formed April 4 1853, for the term of 30 years under said statute of 1853. In 1882 a statute was passed authorizing the continuance of the existence of a corporation for a further term not exceeding thirty years by action to be taken by the stockholders *prior to the termination of the corporation by limitation.* This Act was amended in 1887, authorizing the action of the stockholders to be taken for such extension *at any time before the dissolution of the corporation became complete.*

Proceedings were taken under these statutes to extend the life of the Pewabic Mining Company under the claim that a corporation continued in existence after the termination of the thirty years limited in its charter. The Court considered said three years statute in connection with said Sec. 10 of Art. XV of the Constitution, and held that the corporation ceased to exist at the expiration of its charter. (See pp. 313, 314.) The Court says, p. 319: "Let us suppose that the Constitution had not prohibited the granting of charters by special act, but did contain the restriction embraced in Sec. 10.

What would have been its effect upon the power of the legislature? Such declaration that no corporation, except, &c. 'shall be created for a longer time than thirty years' is equivalent to a mandate that thus long and for no longer time shall any corporation be created. Is not such mandate a direct and positive limitation upon the power of the legislature to extend the time or renew the corporate existence beyond that term? What consequences are expected to follow upon the expiration of such limitation? Naturally, the corporation becomes dissolved, and incapable of longer exercising corporate functions in pursuing and carrying on its business. Its business is to be closed out, its obligations paid, and the assets distributed among its stockholders. These are the results which naturally follow from the mandate of the Constitution, and indicate the intent of the instrument. Would a special act of the legislature, were such act permissible, which granted to a corporation an existence of thirty years, and contained a provision that from and after the expiration of said term it should continue a further term of thirty years, with all the rights, privileges and immunities therein granted, without change of corporate or individual rights, stock or property, be a violation of this provision of the Constitution, so far as the term exceeded thirty years? It seems too plain for argument that it would. What the legislature is prohibited from doing directly they are prohibited from doing indirectly."

Again on p. 321, the Court says: "The design of the framers of the Constitution was to place all purely private corporations on an equal footing, and to fix a limit of time beyond which they should not continue to exist. This design would be frustrated if authority could be given them to perpetuate their existence by a resolution adopted by a vote of a majority of two-thirds of the capital stock *or by any other device.* In considering the question thus far we have treated the statutes

of 1882 and 1887 as expressing an intention to renew corporations which were originally created for the full limit of thirty years. It must be admitted that there is language used in the statute which would justify the inference that it was intended to apply to such corporations. But it is not necessary to give the statutes this construction. And we are bound to give to these enactments such construction, if practicable, as will preserve their force and validity, rather than to avoid them or render them nugatory. The period for which corporations shall be formed is left with the corporators within the Constitutional limit. There probably are corporations, and the writer of this opinion has known of some, which have not organized for the full period of thirty years. *As applied to such corporations, the Statute within the Constitutional limits is valid, and would authorize them to renew their corporate existence for the remainder of the Constitutional limitation.*"

The suit was to determine the rights of the respondents to renew the mining company under the said statutes, and the Court rendered a judgment of ouster against the defendants.

The only other case in which the application of said three years statute has come before the Court is Bewick vs. Alpena Harbor Company, 39 Mich., 700.

A canal company had been formed under a general statute passed in 1861, authorizing the formation of canal companies. In 1875 the statute of 1861 was repealed with the proviso that all corporations legally formed and existing under said Act of 1861 should continue to have legal existence for the purpose only of closing up their business in accordance with the provisions of Chap. 130 of Comp. Laws of 1871, which chapter contained the provisions of said three years statute. The Court held that said three years statute applied to said Alpena Harbor Company. The thirty years from the formation of the Company under said Act of 1861 could not have expired

until 1891. Adding the three years to the date of the repeal of the charter in 1875 would extend the existence of the corporation only to the year 1878.

In the light of the decision in Mason vs. Perkins had the three years statute enacted in 1838 not existed at the time the Constitution of 1851 was adopted, and the statute of 1853 under which the Pioneer Iron Company was organized had provided that corporations might be formed for thirty years, and that at the expiration of the thirty years the corporation should continue for three years in addition, for the purpose of "prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock," the provision for the continuance for the three additional years would have been held invalid.

If such a provision would be good for three years, a like provision would be good for any number of years which the legislature might determine upon. The powers of the corporations under such provision are:

First: To continue to be a corporation.

Second: To prosecute and defend suits.

Third: To gradually settle and close their concerns.

Fourth: To dispose of and convey their property.

Fifth: To divide their capital stock. Under such provisions, a corporation, if a mining company, owning a mine, could carry on the work of extracting the ore from the mine and selling it, or manufacturing it for the purpose of selling it, until the mine should be exhausted, that would be strictly closing out its business, and the corporation would possess all the powers for that purpose that it possessed for carrying on its business before the expiration of the thirty years. The effect of the Constitutional provision would simply be to prevent the cor-

poration from adding to the business, and to its supplies for carrying on its business which it possessed at the end of the thirty years.

The decision of the Supreme Court of Michigan in *Mason vs. Perkins* determines the point in this case that the three years statute did not apply to the charter of the Pioneer Iron Company, and that at the expiration of its charter the Company came to its end and ceased to exist.

Upon the expiration of the Company the right to mine ore under the lease expired. This is the decision of the State Court in this case. (Record, pp. 573, 574 and 575.) That result follows also from the explicit terms of the lease. These terms are that Harvey conveys to the Pioneer Iron Company "certain rights and easements hereinafter described, subject to the provisions and limitations thereto annexed, in and upon certain pieces or parcels of land known and described as follows, to-wit:"

The lands are described, and then the instrument leases the mining rights as follows: "For the sole purpose of mining and quarrying at its own expense such ores and marble as may be found thereon, and subject to the provisions hereinafter mentioned, viz: Provided, it shall not quarry, mine or remove any ores on said lands except such as it shall actually convert into merchantable iron in its own furnaces or forges. * * * The rights and easements above mentioned shall descend to the corporate successors of the party of the second part, and not to its assigns." (Record, p. 19).

Language could not well be more explicit than is used by the lease to express the purpose to limit to the Pioneer Iron Company exclusively the right to mine ore, and also to limit the purpose for which the mining of ore might be done, and the amount or extent of the mining permitted to that Com-

pany. *The mining is to be done by the Company itself, to be actually converted by itself into merchantable iron in its own furnaces or forges.* All other parties, all other furnaces or forges, and all other purposes of mining are excluded, and the transfer of these privileges is forbidden.

The provision that "the rights and easements above mentioned shall descend to the corporate successors of the party of the second part" is employed to convey the idea that the rights granted by the lease to the Company were to continue in the corporation through all changes in the stockholders occuring during the life of the Company. It was the employment in the lease of the term "corporate successors" which was in use in the statutes of Michigan to express that the rights and franchises granted by the statute to the corporation were to continue in the corporation during the term of its charter through whatever changes might occur of its stockholders.

Laws of Michigan of 1848, p. 76, organizing the Copper Falls Mining Company.
Id. p. 150, organizing the Eagle Harbor Mining Company.
Id. p. 185, organizing the Quincy Mining Company.
Id. p. 337, organizing the Jackson Mining Company.
Laws of 1849, p. 62, organizing the Minnesota Mining Company.
Id. p. 85, organizing the Isle Royal Mining Company.
Id. p. 219, organizing the Native Copper Mining Company.
Id. p. 223, organizing the Phoenix Copper Company.
Id. p. 331, Organizing the Pittsburg and Isle Royal Mining Company.
Laws of 1850, p. [illegible] organizing the Cleveland Iron Mining Company.

In the case of each of the above Companies the Statute by the first section enacts that persons whose names are given "and others who shall become associated with them are hereby

constituted a body corporate by the name of" ——— giving the name and purpose of the corporation. The second section of the act says: "The said Company shall have corporate succession." It fixes the amount of capital stock and the amount of the shares. A separate section in each statute designates the time at thirty years during which the Company shall continue.

The act incorporating the St. Mary's Canal Company, Laws of 1847, p. 130, by the first section provides "that such persons as may hereafter become stockholders therein, shall be, and they are hereby declared, to be a body corporate and politic, under the name and style of the St. Mary's Canal Company, for the purpose of opening and constructing a canal navigation, with suitable locks and basins, around the fall of the St. Mary's, at the outlet of Lake Superior within the State of Michigan; and they, with their associates and successors, *shall so continue to have succession* for the period of fifty years from and after the passage of this act."

The use of the term "corporate successors" in General Law is employed to express the special feature of a corporation aggregate by which its rights and franchises continue in the corporation during the term prescribed by its charter.

1 Clark & Marshall on Private Corporations, Sec. 9, pp. 25 and 26.

2 Morawetz on Private Corporations, Sec. 1009, p. 969.

The plain intention of the lease is to give to the Pioneer Iron Company the right to mine the ore during the term of its life, and to provide that the right of mining shall not pass from that Company.

Fourth. The Pioneer Iron Company was not reorganized by proceedings which the statute requires to be taken in order to constitute a reorganization.

The statute under which the attempted reorganization was made was approved June 8, 1889 and provides as follows: "That it shall be lawful for any corporation heretofore or hereafter organized under the general laws of this State, for mining, smelting or manufacturing purposes, whose corporate term has expired or shall expire by limitation, at a special meeting of its stockholders called for that purpose, by a vote of at least four-fifths of its capital stock, to direct the continuance of its corporate existence for such further term, not exceeding thirty years from the expiration of its former term, as may be expressed in a resolution for that purpose. Such meeting may be called in accordance with the By-Laws of the corporation and the laws of this State applicable to the same class of corporations whose term has not expired, by order of the directors *de facto* of the corporation. Upon the adoption of such resolution by a vote in person, or by proxy duly filed, of a majority of at least four-fifths of the capital stock, *it shall be the duty of the president and secretary of the stockholders' meeting to make, sign and acknowledge* duplicate articles of association, as in the case of a new corporation, to which shall be appended a copy of the proceedings of such stockholders' meeting, certified by the secretary and verified by his oath, which articles of association shall be filed with the Secretary of State and with the County Clerk of the County where the corporation carries on its business, and be by both recorded in their respective offices, at the expense of said corporation * * * *Provided*, That no corporations, except corporations organized to carry on business in the Counties of Houghton, Keweenaw and Ontonagon, shall be permitted to reorganize hereunder which

for the past ten years have ceased to carry on the business for which they were organized.

Sec. 2. The renewed term of such corporation shall begin from the expiration of the former term thereof, and the corporation thus renewed shall hold and own all the property held and owned by the corporation before renewal, and shall be liable to all its debts, liabilities and obligations as fully as if the former corporate term had not expired." (Laws of Michigan of 1889, p. 162 at 163).

The proceedings taken do not comply with the statute in this: The statute requires that the articles for reorganization shall be signed and acknowledged by the president and secretary of the stockholders' meeting, and be filed with the Secretary of State, and the County Clerk.

The articles were not signed by the President of the stockholders' meeting, nor were they acknowledged by anyone. The meeting of the stockholders was held October 7, 1889, of which meeting Alexander Maitland was President, he being elected chairman. (Record, pp. 298, 299, 300).

The articles of association adopted at the meeting are not signed by Alexander Maitland, the president of the meeting, and are not acknowledged by anyone. (Rec., p. 295, 296, 297).

Reorganization could be accomplished only by the signing and acknowledgment of the articles in compliance with the requirements of the statute. It is as though no action had been taken. There was no reorganization.

Doyle vs. Mizner, 42 Mich., 332 at 337, 338.
Carmody vs. Powers, 60 Mich., 26 at 29, 30.
Utley vs. Union Tool Co., 11 Gray, 139 at 141.
Stowe vs. Flagg, 72 Ill., 397 at 401.
Bigelow vs. Gregory, 73 Ill., 197 at 200, 201.
Kaiser vs. Lawrence Savings Bank, 56 Iowa, 104.

The question here is strictly whether such proceedings were taken in compliance with the statute as constituted a reorganization. Whatever view may be taken by the Courts elsewhere, the case of Doyle vs. Mizner, 42 Mich., 332 at 337, 338, establishes that under the law of Michigan, where the statute requires that in order to form a corporation the articles of association shall be acknowledged, no corporation is formed without the acknowledgment of the articles, as required by the statute. In that case an attempt was made to establish the existence of a corporation by offering in evidence articles of association which had not been acknowledged. The Court uses this language, p. 337: "Under our present Constitution no charters can be granted, and all private corporations must be organized under general laws, *and can only be valid when strictly conforming to all the conditions imposed upon their completion. The statute concerning manufacturing corporations expressly requires that the articles shall be acknowledged before some person authorized by the laws of this State to take acknowledgments of deeds.* Comp. L., Section 2839. And the previous Section required that before any such corporation should commence business, the articles should be filed with the Secretary of State and County Clerk. Section 2838. Apart from any circumstances which might bind parties by a recognition of an association *de facto*, it is very clear that so long as they refrain from acknowledging their articles these remain inchoate and imperfect. There is no statute which provides—as in case of deeds—for proving them without an acknowledgment, or for compelling their acknowledgment. The articles proved by the cross-examination of Doyle did not comply with the statute. * * * There was, therefore *no incorporation shown, and therefore for the purposes of this case none exists as a matter of fact.*"

If the Company expired April 2, 1887, it did not after that date own the ninety-nine year lease. If the Company's rights under the lease would end by the dissolution of the Company and revert to the Defendants in Error, such result would be accomplished at the dissolution of the Company. The question in respect of what had become of those rights would not remain in abeyance indefinitely.

Fifth. The statute does not permit the reorganization of a company which for ten years preceding the enactment of the statute had ceased to carry on the business for which it was organized, unless the corporation had been organized to carry on its business either in the County of Houghton, Keweenaw, or Ontonagon, and for that reason the Pioneer Iron Company could not be reorganized under the statute.

The Bill alleges that "from the 10th of March, 1866, the Pioneer Iron Company ceased to carry on the business for which it was organized and has not since been engaged in nor carried on any business contemplated by its articles of association." (Record, p. 8.) The Supreme Court of Michigan found those averments to be true.

The Court says, (Record p. 569): "Under the allegations of the Bill, *as well as under the proofs*, the Pioneer Iron Company is used as a 'dummy' for the benefit of the defendant companies. The defendants own, and have owned for many years, all its capital stock, its furnaces and property, both real and personal. They have managed all its affairs, and for their own benefit. All its accounts if any have been kept in the name of the Pioneer Iron Company, have been keept upon the books of the defendants."

Again on p. 575, the Court says: "Soon after the execution of the ninety-nine year lease, the Pioneer Iron Company

made same explorations upon certain portions of the land covered thereby, found ore, but not in paying quantities, abandoned the explorations and for fully 43 years made no other attempt to avail itself of this mining right. In 1866 it conveyed to the Iron Cliffs Company by lease for a period of ten years all its iron works, buildings, lands, and rights, &c. (reserving, however, certain rights and privileges not necessary to mention), and provided by the lease that dividends should be paid directly to its stockholders, rather than into its treasury. The Iron Cliffs Company afterwards became the owner of all its stock, and thereafter carried on the furnace business. The Pioneer Iron Company never thereafter took any control of its furnace. *It was regarded as merged in the Iron Cliffs Company.* So notorious was this that in the year 1877 the Commissioner of Mineral Statistics, in his first annual report, speaking of this company, said: 'The Pioneer Iron Company, by whom the furnace was built, became subsequently merged into the Iron Cliffs Company.' In subsequent reports it was referred to as 'absorbed by the Iron Cliffs Company.' The officers of the Pioneer Company thereafter neither made nor filed any reports as the law expressly required them to do."

It is submitted that the fact is to be taken as established in the case that for ten years preceding June 8, 1889, when the statute was passed, the Company had ceased to carry on the business for which it was organized.

The Company was organized to carry on its business only in Marquette County, and no provision was made in its articles to carry on business in either of the counties of Houghton, Keweenaw or Ontonagon, and was therefore by the express terms of the statute not permitted to reorganize. Record, p. 17; Article 6 of the Articles of Association).

Sixth. The effect of reorganization is declared by Sec. 2 of the statute to be that, "the renewed term of such corporation shall begin from the expiration of the former term thereof, and the corporation thus renewed shall hold and own all the property held and owned by the corporation before renewal." This provision could not apply to the ninety-nine year lease.

From the time of the expiration of its charter on April 2, 1887, the Pioneer Iron Company did not hold or own the ninety-nine year lease, and within the intent and meaning of the statute the lease was not "property held and owned by the corporation before renewal." If by the expiration of the charter, the rights of the Company under the lease ceased, and they reverted to the complainants or if the privileges granted by the charter came to and end, no statute subsequently enacted could renew and transfer such rights and privileges to the renewed company.

Seventh. This suit was commenced March 3, 1900. (Record p. 21). The proofs were taken at a session of the Circuit Court held from the 19th to the 23rd of March, 1901. (Rec. p. 52).

To meet the objection that the above proceedings taken on the 7th of April, 1889, were without force, on the 3rd day of April, 1901, after the proofs had been taken in the case, further pretended proceedings were taken to adopt perfected and amended articles for the reorganization of the Pioneer Iron Company, which articles were filed April 9, 1901, in the office

of the Secretary of State, and were offered in evidence on the final hearing of the suit in the Circuit Court. (Record p. 530 to 542).

Evidently, if there had been no reorganization of the Pioneer Iron Company prior to the bringing of this suit, such reorganization could not be made while the suit was pending, so as to affect the controversy in the suit. These proceedings were irrelevant to the case.

But it may be noted that the statute requires the action for reorganization to be taken by at least four-fifths of the capital stock, at a special meeting of the stockholders. This last action was taken fourteen years after the expiration of the charter of the Company, and no proof was offered that the persons taking part in these proceedings were holders of the stock of the Company. Their names and the amounts of stock represented by them appear at pp. 534, 535 and 537 of the Record. These are entirely different persons from those who assumed to be stockholders in the proceedings attempted for reorganization on October 7, 1889. See Record, p. 297. That certain persons got together and assumed to be stockholders is not a sufficient compliance with the statute. To constitute a reorganization it must be shown by proof that the action was taken by those who were then in fact holders of the stock.

IV.

The questions to be determined upon the subject of the reorganization of the Pioneer Iron Company which have been called to the attention of the Court and discussed in this brief, we believe are not questions for the determination of this

Court, and we submit that, if in the view which the Court may take, the question whether the Pioneer Iron Company was or was not reorganized should be determined in order to a proper disposition of the suit, the case should be remitted to the State Court for such determination.

These questions are distinctly and wholly questions of the local law of Michigan, and it seems to us they should be determined by the Courts of the State. We understand that such disposition of the case would be in accordance with the practice of this Court.

Murdock vs. City of Memphis, 20 Wall., 590 at 634, 636.
Telluride Power Co. vs. Rio Grande R. Co., 175 U. S., 639 at 647.

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Supreme Court of the United States

OCTOBER TERM, 1916.

No. 179.

THE IRON CLIFFS COMPANY, THE CLEVELAND-CLIFFS IRON COMPANY, EDWARD J. BERWIND, and MORGAN M. DARLEY,

Plaintiffs in Error,

vs.

NEGAUNEE Iron Company, Inc., WARD V. BENEDICT and MAY KAUFMAN,

Defendants in Error.

Reply Brief of Defendants in Error Answering Certain Erroneous Statements of Fact Contained in Main Brief of Plaintiffs in Error.

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Attorney for Defendants in Error.

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BENTON HANCHETT,
Of Counsel.

MARQUETTE,
MINING JOURNAL OB CLEVELAND, CLEVELAND,
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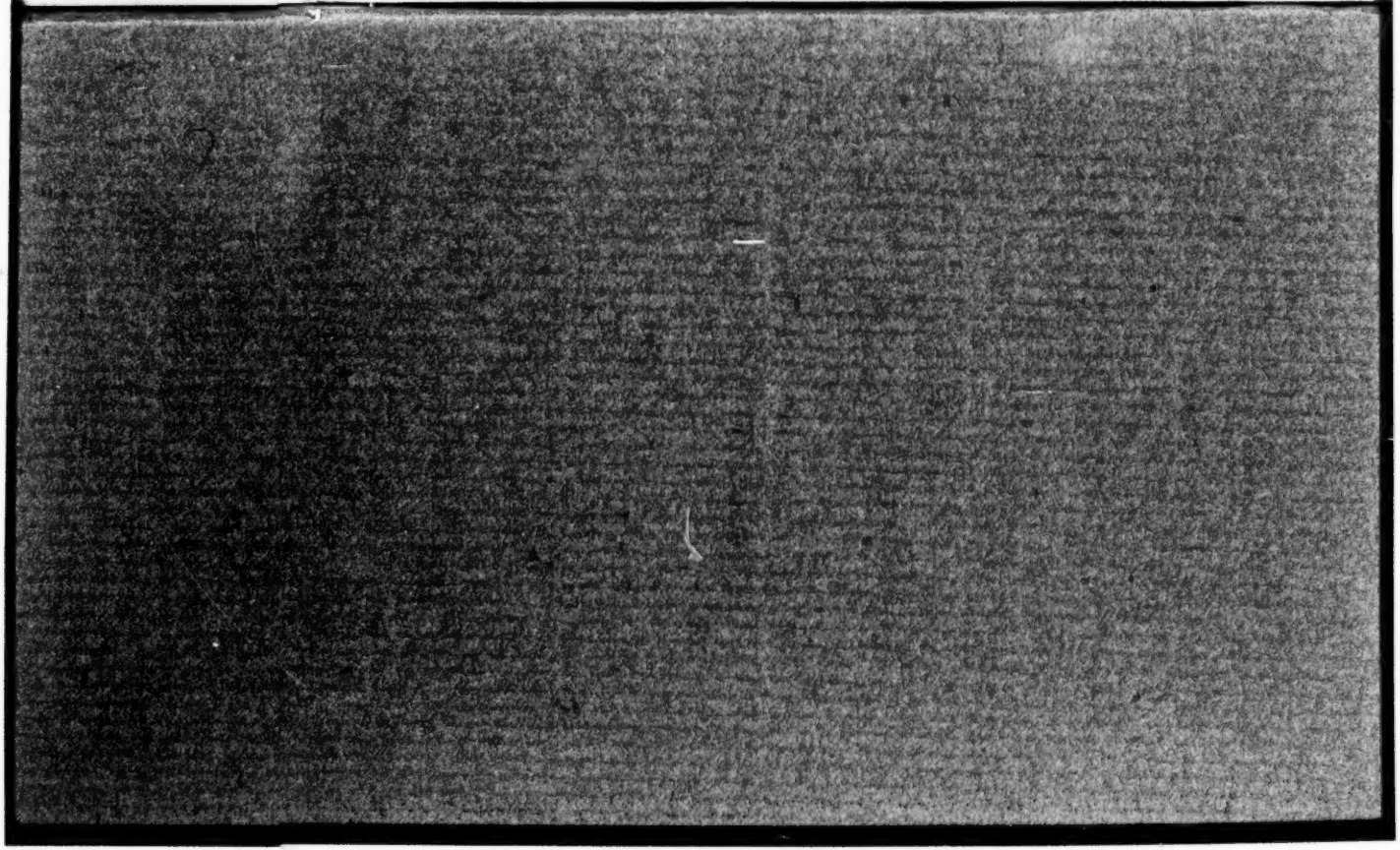

No. 173.

Supreme Court of the United States.

THE IRON CLIFFS COMPANY, et al,
Plaintiffs in Error,
v.
THE NEGAUNEE IRON COMPANY, et al,
Defendants in Error.

Correction of Certain Erroneous Statements of Fact Contained in Main Brief of Plaintiffs in Error.

We desire to call the attention of the court to certain erroneous statements of fact contained in the plaintiffs' main brief.

I.

The following statement is made on page 5 as to the basis for the relief asked:

> "Numerous acts and defaults of the Pioneer Iron Company were set out, all of which were claimed to result in the termination of all the rights of said company under this 99-year lease; *and it was also alleged that the defendants, acting in the name of the Pioneer Iron Company, as*

stockholders, directors and agents of said company, were wrongfully asserting, in its name, its existing and continuing right to mine under said lease, and were in the act of mining and removing iron ore from said premises."

This statement is entirely misleading. The 13th paragraph of the bill alleges the expiration by limitation of the corporate existence of the Pioneer Iron Company, and its dissolution, and by such dissolution the termination of any rights which that company may have had in complainants' land, under and by virtue of the 99-year lease. The 16th and 17th paragraphs allege a fraudulent conspiracy by the defendants to defraud the complainants by mining and removing iron ore from their lands, under cover and by use of the name of the defunct Pioneer Iron Company, but for the benefit of the corporate defendants. The connection of Mather and Duncan with this conspiracy is alleged to be as officers and agents of the other defendants, and not as "stockholders, directors and agents" of the Pioneer Iron Company. It is also alleged that Duncan is the managing agent of the Iron Cliffs Company and of the Cleveland-Cliffs Iron Company, and is superintending and directing the work done on complainants' lands under the *pretense* that he is the agent of the Pioneer Iron Company.

The 19th paragraph of the bill alleges that complainants have applied to Mather and Duncan to ascertain who are the persons claimed to be officers and directors of the pretended Pioneer Iron Company, and that these defendants declined to give the names of such persons, or to furnish information by means of which their names can be obtained.

An examination of the bill will show that the acts and defaults of the Pioneer Iron Company therein set out are alleged for the purpose of explaining and

characterizing the wrongful acts of the defendants. *The very existence of the Pioneer Iron Company is by the bill denied.*

The evidence of the conspiracy and the use made by the defendants of the name of the Pioneer Iron Company was clear and convincing, and the supreme court, whose findings alone we take it this court will consider, expressly find (Record p. 569), as follows:

> "Under the allegations of the bill, *as well as under the proofs*, the Pioneer Iron Company is used as a dummy for the benefit of the defendant companies."

In like manner, the relief granted did not, as is erroneously asserted by plaintiffs in error at page 6, and frequently elsewhere in their brief, enjoin anyone as agent of the Pioneer Iron Company. It enjoined only the corporate defendants, the Iron Cliffs and Cleveland-Cliffs Iron Companies and their officers, including the individual defendants, whether acting individually or as representatives of the defendant corporations.

II.

From pages 6 to 15 an attempt is made to show from the testimony that in the organization of the Pioneer Iron Company, Harvey attempted to wrong that company, and it is claimed on page 15 that the facts admitted with reference to Harvey are such that neither he nor his grantees come with clean hands into a court of equity. This conclusion is wholly unwarranted, and is based entirely upon mis-statement and misconstruction of the testimony. On page 7 the statement is made that Harvey was, before its organization, the agent and trustee of the stockholders in Michigan.

There is no evidence whatever in the case, and nothing in the testimony of Harvey to justify the statement that he was, prior to the organization of that company, in any manner the agent of any of the parties who afterwards became its stockholders, nor does the evidence justify the statement that he undertook the task of acquiring land useful for the purposes of this corporation, and in doing this chose the method of passing title through himself while acting as the agent and trustee of the corporation.

The facts are, that on Feb. 26, 1857, Harvey purchased 4162 acres of land in Marquette county from Reynolds. There is no evidence that if Harvey, at this time, had in mind the purpose of organizing a corporation, he had interested anyone in the venture, or that he was under obligations of any kind as agent or trustee for anyone who subsequently became a stockholder in the Pioneer Iron Company. That company was not organized until April 2, 1857, and there is no evidence that Harvey bought the lands from Reynolds for its use.

The lands which he conveyed to the company were 2688 acres acquired from Reynolds, and 800 acres of other lands. This is the finding of the supreme court (Record p. 562). The inference, therefore, attempted to be drawn, that Harvey purchased from Reynolds the 4162 acres for the company, is entirely unjustified by the facts.

On page 13 the statement is made that the consideration for the 99-year lease, while apparently but one dollar, was really the twenty-five thousand dollars paid by the Pioneer Iron Company to Reynolds; that the consideration for the lease was not the amount paid Reynolds is amply shown by the evidence, but we

are content to rest the question upon the finding of the supreme court (Record p. 574):

> "The undoubted consideration for this lease was the exploration and development of iron ore upon the lands by the company, the discovery and development of which would redound to the benefit of the lessor. There must have been some consideration moving from this company to Harvey to induce him to make the lease, other than the nominal consideration expressed in it. The learned counsel for defendants attempt to show that the twenty-five thousand dollars paid for the deed was also the consideration paid for the lease. The record fails to establish any such claim. On the contrary, it conclusively appears that the standing timber upon the lands conveyed by the deed was then worth more than the twenty-five thousand dollars, the consideration expressed therein and paid."

This mis-statement as to the consideration for the lease appears many times in plaintiffs' brief, but we deem this one correction all that is necessary.

On the same page they say:

> "The Pioneer Iron Company gave direct to Reynolds its obligation for $25,000, the amount of the consideration named in the conveyance, securing the same by mortgage and afterwards paying it in full."

This is incorrect, as an examination of the record will demonstrate. The consideration for the conveyance from Reynolds to Harvey was $30,000 (Record p. 13), while the consideration of this mortgage was $20,000, to be evidenced by four promissory notes of the sum of $5,000 each and interest, viz: the first for $6,400, the second for $6,050, the third for $5,700, the fourth for $5,350; amounting in all to $23,500 (Record p. 76).

In this connection, we desire to call the attention of the court to the finding by the Supreme Court of the State of Michigan (Record p. 565):

> "Not long after its organization, the company made some explorations on the land in controversy, but discovered no ore of sufficiently good quality for use, abandoned further operations in that direction, and, during its lifetime, made no further efforts to mine ore from its lands for use in its furnace."

It thus appears that the lessor never received the only consideration there was for this lease, to-wit: the exploration of his lands.

The statement is several times made by plaintiffs in error in their main brief, that the 99-year lease covered a little over 648 acres of land, and that it was the remaining part of the land which Harvey acquired from Reynolds by the deed of Feb. 26, 1857. It is, perhaps, immaterial, but the acreage covered by the 99-year lease was 1474, and not 648 acres. (Record, plat 3, p. 54.)

III.

At page 15, the statement is made, that "it is undisputed on the evidence, that the Pioneer Iron Company entered upon its estate, cut timber and mined iron ore, and that it carried on operations to a greater or less extent from its organization until now, and is still actively engaged in the manufacture of pig iron within the limits of Marquette County, as they existed at the time Reynolds gave his deed." It is a fact that the Pioneer Iron Company cut the timber on the land described in the 99-year instrument within the five years limited for such cutting, and that it explored for iron ore on these lands in the late fifties, and possibly in 1860 or 1861. (Record p. 488). The supreme court found that "not long after its organization, the company made some explorations on the land in controversy,

> but discovering no ore of sufficiently good quality for use, abandoned further operations in that direction, and, during its lifetime, made no further efforts to mine iron ore from its own land for use in its furnaces. The company became financially embarrassed in 1866, leased its own plant and all its lands and property, including the 99-year lease, to the Iron Cliffs Company, a corporation organized under the laws of this state. Shortly after the lease to the Iron Cliffs Company, that company acquired the entire capital stock of the Pioneer Iron Company, and continued to own it until after Oct. 18, 1889." * * * "From 1866 to 1890, the Iron Cliffs Company operated the furnace. Afterwards it was operated by the Cleveland-Cliffs Iron Company, a corporation organized under the laws of West Virginia, until 1894, when that company dismantled the furnace and has never rebuilt it. (Record p. 565).

At page 569, the supreme court find that "the defendants own, and have owned for many years, all its capital stock, its furnaces and property, both real and personal; they have managed all its affairs, and for their own benefit; all its accounts, if any have been kept in the name of the Pioneer Iron Company, have been kept upon the books of the defendants."

The testimony of Duncan, one of the plaintiffs in error, shows that the only books of the Pioneer Iron Company kept in the County of Marquette go back only as far as the commencement of the trespasses on the lands in controversy in December, 1899 (Record p. 101). No books of the Pioneer Iron Company were kept in the general offices of the defendant corporations in Cleveland before that time (Record p. 432). Gibbs, who was at one time general manager, and in the employ of the Iron Cliffs Company from 1873 to 1894, testifies that the Pioneer Iron Company kept no books, paid no men, drew no checks, and paid no sal-

aries during all the years he was connected with the company (Record pp. 494-503).

The Pioneer Iron Company is stated, in its Articles of Association, to be formed "for the purpose of procuring a suitable location for a manufactory, and lands to furnish coaling facilities therefor, in the upper peninsula of the State of Michigan, and working the same for the production of merchantable iron, and such other use of their lands as the company may hereafter determine and adopt."

It is, therefore, shown beyond controversy that the Pioneer Iron Company did not continue in active and extensive business before and after the year 1889 and up to the present time. The only business shown by the record cited on pages 19 and 20 of their brief, is conveyancing or leasing in the disposal of its lands, except that, Jan. 3, 1900, after the commencement of the trespasses on the lands of defendants in error, there is a record of the purchase of the Carp River furnace at Marquette. The testimony is conclusive, that until the defendants originated the fraudulent scheme which resulted in this litigation, the Pioneer Iron Company had done no business of any kind in connection with the mining of ore or the manufacture of iron since 1866.

IV.

On page 19, the statement is made, that under the law allowing the reorganization of corporations, the Pioneer Iron Company took the necessary steps and proceedings, and duly reorganized said corporation, thereby extending its charter for another period of thirty years from April 2, 1887. This statement, in substance, is repeated on page 27 and many times elsewhere.

The question of the validity of the reorganization of the Pioneer Iron Company, and the steps taken for that purpose, are sufficiently discussed in our main brief, commencing at page 63; but that the question was at issue and disputed in the case is sufficiently shown by the opinion of the supreme court at page 576, where the court says:

> "Very important questions are raised by counsel as to the effect of this reorganization statute, the validity of the act of reorganization by the Pioneer Iron Company, as to whether the Pioneer Iron Company was in a position to avail itself of this statute, and also, the effect upon the 99-year lease, should the reorganization be held to be valid."

V.

On page 20, the statement is made that the Pioneer Iron Company as reorganized has continued to assert its right in the 99-year lease.

There is no justification for this statement in the record. On the contrary the supreme court found that the defendants in error, beginning about 1870, explored each forty-acre tract covered by the 99-year lease, and found ore upon each tract upon which plaintiffs in error have entered, and mined ore therefrom, amounting to at least three million tons, and expended money thereon amounting to at least seven hundred thousand dollars. These explorations were carried on openly and notoriously for more than twenty years (Record p. 565).

In this connection, also, the supreme court says (Record p. 575): "during all of which time the Pioneer Iron Company stood by in silence asserting no right under its lease;" and again (Record p. 575), "soon after the execution of the 99-year lease, the Pioneer Iron Company made some explora-

> tions on certain portions of the land covered thereby, found ore, but not in paying quantities, abandoned the explorations, and for full forty-three years made no other attempt to avail itself of this mining right."

At page 42, it is asserted that "the decree complained of directly and in terms declares the 99-year lease no longer exists as the property of the Pioneer Iron Company, and its officers are thereby enjoined perpetually from asserting its right therein."

We have already shown that the decree, neither in terms nor by implication, affects the property of the Pioneer Iron Company, and that its officers are not enjoined from asserting its rights therein. The fact that the defendants, Mather and Duncan, disclaimed that they were acting for the defendant corporations was not conclusive upon the court. The question of their relation to the alleged trespass was in issue, and the supreme court found that they, as officers and agents of the defendant corporations, and **not as officers and agents of the Pioneer Iron Company,** were engaged in trespassing upon the lands of the defendants in error (Record p. 569).

The statement is made on page 43 of plaintiffs' brief that ten shares of stock of the Pioneer Iron Company was owned by Mather personally, and there was in his name as trustee for the Iron Cliffs Company 3930 shares of said stock. This statement is not borne out by the record, but the facts in connection with it are sufficiently discussed in defendants in error's original brief on the motion to dismiss (See pp. 11-40).

In view of the arguments of the plaintiffs in error in their main brief, based on the idea that the 99-year instrument was a "valuable existing leasehold," it is desired that this court bear in mind that

> "the 99-year lease conveyed to the Pioneer Iron

> Company only an indivisible, incorporeal and personal right to mine ore, and then only for such as it should actually convert into merchantable iron in its own furnaces and forges" (Record p. 573),

consisting of one furnace with two stacks, and was appurtenant thereto (Record p. 574), and ended with the abandonment and destruction of the furnace in 1894 (Record p. 575).

The law of the case, we apprehend, has been sufficiently discussed in our briefs heretofore filed herein.

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Of Counsel.

Supreme Court of the United States.

No. 173.—October Term, 1904.

Iron Cliffs Company, The Cleveland Cliffs Iron Company, William G. Mather, and Murray M. Duncan, Plaintiffs in Error,
vs.
Negaunee Iron Company, Edward N. Breitung, and Mary Kaufman.

In error to the Supreme Court of the State of Michigan.

[April 3, 1905.]

This case was begun in the Circuit Court of the State of Michigan by the defendants in error, The Negaunee Iron Company, Edward N. Breitung and Mary Kaufman, against The Iron Cliffs Company, The Cleveland Cliffs Iron Company, William G. Mather, and Murray M. Duncan. The defendants in error, plaintiffs in the court below, claimed to be the owners of certain premises upon which there was an outstanding lease purported to run for a term of ninety-nine years from its date, September 17, 1857, made by Charles Harvey to the Pioneer Iron Company. As the controversy in this court centers about this lease the allegations of the bill in respect thereto may be noticed. It is alleged that the interest conveyed by Harvey on the 17th day of September, 1857, to the Pioneer Iron Company was for the sole purpose of mining and quarrying at its own expense such ores and marble as might be found on the premises, subject to the qualification that the said company should not quarry, mine or remove any ore from said lands, except such as it could actually convert into merchantable iron in its own furnaces and forges, being the furnaces and forges then being constructed or about to be constructed by the said company at Negaunee. Complainants allege that at the time of the filing of the bill they were, and for more than fifteen years theretofore, had been in the actual and exclusive possession of all the lands described in the bill, and the ore and marble thereon, claiming to be the exclusive owners thereof. That said Pioneer Iron Company, in the month of September, 1859, erected two certain ore furnaces at Negaunee instead of one furnace, as contemplated at the time of the execution of the grant or lease by Harvey to the Pioneer Iron Company.

That said Pioneer Iron Company carried on the business of manufacturing iron at its said furnaces from the time they were constructed until about the first day of January, 1866. That said Pioneer Iron Company, in carrying on its said business, procured no iron from the premises, or any

portion of the premises described in said lease executed by the said Charles T. Harvey to the said Pioneer Iron Company, but procured all of their ore for the manufacturing of iron from other lands.

Complainant alleges that on the 1st day of January, 1866, the Pioneer Iron Company ceased to do business, and has not since that time manufactured or operated under the lease, but, on the contrary, at and from the date aforesaid abandoned the same. On the 10th day of March, 1866, the Pioneer Iron Company entered into an agreement with and leased to the Iron Cliffs Company for the period of ten years its entire real and personal property situated in the county of Marquette, Michigan, consisting of all its iron works, buildings, lands and property rights. That after making said lease and agreement with the Iron Cliffs Company the said Pioneer Iron Company has made and filed no reports as required by the laws of the State of Michigan.

"That at some time prior to the first day of January, 1873, the said Iron Cliffs Company became the owner of all the capital stock of said Pioneer Iron Company, and said stock has since that time been held in the names of different individuals for the uses and purposes of said Iron Cliffs Company, and the certificates of stock representing said capital stock of said Pioneer Iron Company have been and now are held in the names of different individuals who are officers, directors, stockholders, agents or servants of the said Iron Cliffs Company and of the Cleveland Cliffs Iron Company, a corporation organized under the laws of the State of West Virginia and doing business at Negaunee, in said county of Marquette, Michigan, which two corporations have been operating together in the conduct of their business, and whose officers and agents are in the main the same persons; that said stock is held as aforesaid for the use and benefit of said Iron Cliffs Company and the said Cleveland Cliffs Iron Company.

"That on the 2d day of April, A. D. 1887, the corporate existence of said Pioneer Iron Company, by the terms of its articles of association, expired by limitation, and said corporation became and was thereby dissolved; and that whatever rights, if any, the said Pioneer Iron Company had and held under and by virtue of said lease were thereby terminated and extinguished, and such rights and interest thereby reverted to and became vested in said Charles T. Harvey and his grantees.

"That all the lands hereinbefore specially described are mineral lands and have therein large deposits of valuable iron ore and that the chief value of said lands consists in the iron ore situated therein, and the mining and removing therefrom of said iron ore by the defendants would take from said lands their principal value and would work and would be to your orators an irreparable injury.

"That the officers and agents of said Iron Cliffs Company and said Cleveland Cliffs Iron Company, who are engaged in and carrying out the said scheme and plan to defraud your orators and to mine and remove the iron ore from said lands under the cover and by the use of the name of the Pioneer Iron Company, are, so far as they are known to your orators, William G. Mather, who is the president of said Iron Cliffs Company and also president of said Cleveland Cliffs Iron Company, and Murray M.

Duncan, who your orators are informed and believe, and upon information and belief charge the truth to be, is the managing agent of the said Iron Cliffs Company and of the said Cleveland Cliffs Iron Company. That said Duncan and said Mather and their confederates, as aforesaid, well know that the corporate existence of the said Pioneer Iron Company has long since been terminated and said corporation dissolved, and that the rights and privileges granted in said lease of date September 17, 1857, have reverted to the said Charles T. Harvey and his grantees; notwithstanding which said Duncan, under the pretence that he is acting as agent of said Pioneer Iron Company, is engaged in superintending and directing said work which is being done on said lands by various persons who are laborers acting under his orders."

The prayer of the bill is—

"(1.) That by the decree of this honorable court, all the rights and privileges in the mineral and stone granted in said lease, executed by the said Charles T. Harvey as aforesaid, to the said Pioneer Iron Company, be declared to be terminated and of no binding force or effect as against your orators or their said lands.

"(2.) That in so far as it affects your orators' said lands, said lease be cancelled and the cloud upon your orators' title as aforesaid be removed, and your orators' title to all the iron ore and marble in and upon their said lands be quieted and confirmed in your orators.

"(3.) That the said William G. Mather, Murray M. Duncan, the said Iron Cliffs Company and the said Cleveland Cliffs Iron Company, and their officers, directors, agents, attorneys and employees, be perpetually enjoined and restrained from setting up in the name of said Pioneer Iron Company or in any other manner any right or title under said lease from said Charles T. Harvey to said Pioneer Iron Company, in or to your orators' said lands, and entering upon or removing from said lands any iron ore or marble, and for such other and such further relief as to the court shall seem meet and proper."

One of the defendants, Murray M. Duncan, answering separately, took issue upon the allegations of the bill and denied specially that the Pioneer Company is dissolved, or any of its rights or property under the lease or conveyance terminated, and avers that the said Pioneer Iron Company is still the owner of the property rights and interests granted and conveyed; admits that he, as an agent of the said company, has actively engaged in conducting operations on some of the lands covered by the conveyance, for the purpose of discovering iron ore to be used in the furnaces of the Pioneer Iron Company, and that if ore sufficient in quantity and quality is discovered on the premises the said Pioneer Iron Company intends immediately to purchase the right to the surface, as required in the agreement, and intends to continue explorations until it finds ore on said lands for the use of its furnaces, or discovers the non-existence of such ore, and further says that he has no personal interest in the lands set forth in the bill, but in all his actions is merely the agent of the Pioneer Iron Company, and not the agent of any other corporation or person whatsoever.

The Iron Cliffs Company and Cleveland Cliffs Iron Company and William G. Mather answer together, taking issue upon the allegations of the bill, admitting the existence of the lease of the Pioneer Iron Company, and aver that the entering and explorations on the lands were made and have been carried on by the Pioneer Iron Company, and deny that the charter of said company has expired; admit that said company through its agents has continued to carry on the operations begun by the Pioneer Iron Company under the direction of William G. Mather, as one of the officers of said company, and deny any interest in the matter set forth in the bill except as some or all of them may be stockholders or officers in the Pioneer Iron Company.

After issue joined and proofs taken the bill of complaint was amended so as to charge that the defendants claim and pretend that under the provisions of number 142 of the Public Acts of 1889 and under number 60 of the Public Acts of 1899 of the State of Michigan, said Pioneer Iron Company has been reorganized and that by reason of said act such reorganized company had the right to mine ore under the said lease. The defendants answered the amendment and admitted that in April, 1901, the Pioneer Iron Company had caused to be filed in the office of the Secretary of State and in the office of the clerk of Marquette County certain perfected articles of incorporation of the said company in renewal of the original organization of said company and under said reorganization, as well as previous filings claimed to be a valid corporation. The record discloses that certain articles of association undertaking to reorganize the Pioneer Iron Company were adopted October 18, 1889, and filed in the office of the Secretary of State, April 8, 1900, and amended articles were filed on April 8, 1901.

And, raising a Federal question, William G. Mather made the following answer:

"And this defendant, William G. Mather, answering for himself, says he owns in his own right and as trustee, 3940 shares of stock of said company, and that if any decree be rendered, in this case by the court in any way declaring a forfeiture or termination or expiration of said ninety-nine year lease, or in any way affecting the rights of the Pioneer Iron Company thereunder, that said Pioneer Iron Company not being made a party to this proceeding, he as such stockholder, and said Pioneer Iron Company would thereby be deprived of its and his property without due process of law, in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States, which forbids any State to deprive any person of life or liberty or property without due process of law, and this defendant avers that any decision or findings of the court in any way limiting, terminating, changing, modifying, annulling, or diminishing the value of any of the rights of the Pioneer Iron Company under said ninety-nine year lease, and as expressed therein, would be void and of no effect under said provision of said amendment of the Constitution of the United States."

Upon hearing, the Circuit Court, after setting forth certain findings, entered the following decree:

"Now, therefore, in consideration of the foregoing findings and determinations of the court concerning the particular matters set forth in the complainants' bill of complaint, it is ordered, adjudged and decreed that the defendants, their counselors, attorneys, solicitors and agents, and each and every of them, whether acting in their individual or representative capacity, immediately vacate and remove from the lands described in the bill of complaint, and that they and each of them be and they hereby are perpetually enjoined from further entering upon the said lands of the complainants for the purpose of exploring for or taking therefrom any minerals or iron ore, or for any purpose whatever, without the consent and authority of the complainants."

This decree, upon appeal, was affirmed by the Supreme Court of Michigan. (96 Northwestern, 468.)

From this judgment a writ of error was sued out to this court.

Mr. Justice DAY delivered the opinion of the Court.

The Federal question, from which alone this court can take jurisdiction, is alleged to arise from the adverse decision made upon the answer of William G. Mather, setting up, in substance, that in proceeding to determine the case and render a decree, without the presence of the Pioneer Iron Company as a party defendant in the action, the said company and Mather, as a stockholder therein, were deprived of property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States. It is elementary that, unless such Federal right set up in the State court was denied the plaintiff in error, this court has no jurisdiction. An examination of the opinion and decision of the Supreme Court of Michigan shows the court held, among other things, that the lease to the Pioneer Iron Company and the rights acquired thereby were appurtenant to the furnaces then existing upon the lands, and that it acquired no right to mine more ore than was necessary to supply such furnaces. That as the right to mine the ore under the lease was appurtenant to the blast furnaces erected and intended to manufacture the iron so mined, the abandonment and destruction of the furnaces destroyed the right to mine the ore under the lease. The Pioneer Company, after the execution of the ninety-nine year lease, having found ore in non-paying quantities, had abandoned explorations, and for forty-three years had made no attempt to mine on the lands. That in 1866 the Pioneer Iron Company conveyed to the Iron Cliffs Company, for a period of ten years, all its iron works, buildings, lands and property rights. The Iron Cliffs Company afterwards became the owner of all the stock of the Pioneer Company and thereafter carried on the furnace business. That the Pioneer Iron Company was regarded as merged in the Iron Cliffs Company, and

never thereafter made or filed any reports as required by the laws of the State of Michigan. That the complainants and those under whom they claim right and title, beginning about the year 1870, spent large sums of money in exploring and developing the lands and opening valuable mines thereon, and that the rights thus acquired, with the knowledge of those in interest, had worked an estoppel of any claim of right under the lease. For these, among other reasons, the Supreme Court affirmed the decree of the Circuit Court.

It is apparent that the questions decided in the State Supreme Court were of a non-Federal character, and give no right of review here unless it is true that in this judgment the Pioneer Iron Company has been concluded, and its property rights taken without giving it an opportunity of being heard in the case. It is fundamental that no person can be deprived of property rights by any decree in a case wherein he is not a party. Not being made a party to the suit, the rights of the Pioneer Iron Company cannot be affected in any way by the decision of the court. (*Finley* v. *United States Bank*, 11 Wheat. 304, 307; *New Orleans Waterworks* v. *New Orleans*, 164 U. S. 471, 480.)

But it is urged that, notwithstanding the Pioneer Iron Company is not a party to the record, its rights are necessarily adjudged in the decision which affects the lease granted to it, and under which the defendants in their answer claim to act. But we cannot concede this proposition. It may be answered primarily that the Pioneer Iron Company cannot thus be denied its rights. The affirmative relief granted to the complainant must be on the case made in the bill, its amendment, and the testimony supporting the allegations therein made. The bill proceeds upon the theory that under the laws of the State of Michigan the charter of the Pioneer Iron Company had expired in 1887, thirty years from the date of its organization, and there was the most careful avoidance in the pleadings of the complainant of any recognition of the existence as a going corporation of the Pioneer Iron Company. It was charged in the bill that its corporate existence had ended, and so far from making it a party the complainants refrained from recognizing it as an existing corporation, and the relief sought was against the corporations and persons named and made defendants in their own right and not as agents of the Pioneer Iron Company, but who were alleged and found to be using the name of that corporation as a cover for wrongful acts of their own. The mere fact that the defendants sought to justify their acts as agents of the Pioneer Iron Company would not warrant the court in awarding a decree against that company or its agents, neither being made a party to the record. Nor, in our opinion, did the judgment rendered have this effect. In the case of *Tindal* v. *Wesley*, (167 U. S. 204,) where a suit was brought in South Carolina to recover possession of certain real property

in that State, one of the defendants answered that he had no personal interest in the property except as Secretary of the State of South Carolina, in which capacity alone he had acquired the control of the property. It was argued that in that event the suit could not be maintained, because it was in fact an action against the State within the meaning of the Eleventh Amendment, and the judgment of the court concluded the State. To this contention this court, speaking by Mr. Justice Harlan, made answer:

"It is said that the judgment in this case may conclude the State. Not so. It is a judgment to the effect only that, as between the plaintiff and the defendants, the former is entitled to possession of the property in question, the latter having shown no valid authority to withhold possession from the plaintiff; that the assertion by the defendants of a right to remain in possession is without legal foundation. The State not being a party to the suit, the judgment will not conclude it. Not having submitted its rights to the determination of the court in this case, it will be open to the State to bring any action that may be appropriate to establish and protect whatever claim it has to the premises in dispute. Its claim, if it means to assert one, will thus be brought to the test of the law as administered by tribunals ordained to determine controverted rights of property; and the record in this case will not be evidence against it for any purpose touching the merit of its claim."

So in this case, notwithstanding the answer of the defendants justifying, as agents of the Pioneer Iron Company, the bill made neither the company nor any agent of it as such a party to the proceedings. The mere fact that the claim is made that the Pioneer Iron Company will be concluded can have no effect upon it so long as it has not submitted its rights to adjudication by voluntary proceedings on its part or been brought into court by proper process. It is true the defendants claim the charter of the company has been renewed and that it is still a going corporation. It is conceded that at the date of its origin the constitution of the State of Michigan prohibited the organization of corporations for a period greater than thirty years. That the Supreme Court of Michigan did not intend to adjudicate that the Pioneer Iron Company if reorganized was concluded by the decree of the Circuit Court, is shown by the language used in the conclusion of its opinion:

"The constitution at the date of its organization and at the expiration of its charter expressly prohibited the organization of corporations beyond the period of thirty years. No provisions then existed, either by the constitution or by the statute, authorizing a reorganization of corporations which had expired by limitation. A constitutional amendment was adopted in 1889, authorizing the legislature to provide by general laws for one or more extensions of the term of such corporations, and also for the reorganization for a further period, not exceeding thirty years, of such corporations whose terms have expired by limitations, on consent of not less than four-fifths of the capital. Pursuant to this authority the legislature in 1889 passed an act authorizing such reorganization. (2 Comp. Laws, sec. 7035.) Very important questions are raised by counsel as to the

effect of this reorganization statute, the validity of the act of reorganization by the Pioneer Iron Company, as to whether the Pioneer Iron Company was in position to avail itself of this statute, and also the effect upon the ninety-nine year lease should the reorganization be held to be valid. Inasmuch, however, as these questions are not essential to a decision of the case, we refrain from determining them."

But it is said the Supreme Court affirmed the decree of the lower court, in which the defendants were enjoined in a representative capacity, and that this includes them as agents of the Pioneer Iron Company, and that when the agents of the company are enjoined the decree amounts to a judgment against the corporation which they represent. But in view of the pleadings, as already stated, and the claim made and insisted upon by the complainants that there was no Pioneer Iron Company in existence, we think the language in the decree has reference to the injunction and order against the corporations and individuals made defendants and their attorneys, solicitors and agents, in their representative capacity, that is, as representing the defendants in any of the ways mentioned. The decree was rendered after finding in favor of the complainants' theory of the case, and had the effect to require the defendants to the bill, their agents and attorneys, to vacate the premises, and enjoined them from further mining thereon. It is utterly inconsistent with the proceedings and the decree to enlarge the judgment so as to include agents of the Pioneer Iron Company. If it should hereafter be insisted that the rights of that company or its agents are concluded, a Federal question might arise if such effect shall be given to the decree in this action. In our view of this case there is nothing in the proceedings or decree in anywise conclusive of the rights of the Pioneer Iron Company, if it is held to be a living corporation, or any of its duly authorized agents acting in its behalf.

We, therefore, find that no Federal question arises upon this record. The proceedings in this court will be dismissed for want of jurisdiction.

True copy.

Test:

Clerk Supreme Court, U. S.